

OKLAHOMA DEPARTMENT OF TRANSPORTATION
BAMS/LAS - LETTING AND AWARD SYSTEM
SPECIAL PROVISIONS

CF000050 REPORTING OF BID RIGGING

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday Through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

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TITLE VI - NON-DISCRIMINATION CLAUSE

CF000101

07/12/10

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance with Regulations:

The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, 49 CFR, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination:

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, national origin, disability/handicap, or income status.

4. Information and Reports:

The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Oklahoma Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Oklahoma Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the Contractor's noncompliance with the nondiscrimination provision of this contract, the Oklahoma Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

a. Withholding of payments to the Contractor under the contract until the Contractor complies and/or

b. Cancellation, termination, or suspension of the contract in whole or in part.

6. Incorporation of Provisions:

The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Oklahoma Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the Oklahoma Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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CF000200 RESIDENCE REQUIREMENTS FOR LABOR ON FEDERAL AID PROJECTS

9-7-76

This is a Federal Aid Project and
the provisions of 40 O.S.
Supplemental 1959 Sect. 193 and 194
relative to residence requirements
are not applicable to the
contractor's employees.

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CF000501

CERTIFICATION FOR FEDERAL-AID CONTRACTS

02-07-90

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

January 6, 2016

OKLAHOMA DEPARTMENT OF TRANSPORTATION
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CF000503 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION

Addendum to FHWA-1273--Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

These requirements apply to materials or equipment secured by the Contractor for a specific Federal-aid highway project. In general, the requirements are not applicable to materials and equipment that come into Contractor or supplier inventories independent of a Federal-aid contract.

XII. Cargo Preference Act (CPA) Requirements

Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected Department or Agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party Contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least fifty percent (50%) of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected Agency or Department to the Secretary, Maritime Administration, for approval no later than thirty (30) days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) Agreement Clauses. Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this

section shall be furnished to both the Contracting Officer (through the Prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(b) Contractor and Subcontractor Clauses. Use of United States-flag vessels: The Contractor agrees-

(1) To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the Prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973)) [42 FR 57126, Nov. 1, 1977]

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CF000800 NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
(Executive Order 11246) 10-27-97
Rev. 11-30-99

The enforcement authority for Executive Order 11246 is 'THE OFFICE OF FEDERAL CONTRACT COMPLIANCE':
U.S. Department of Labor/Office of Federal Contract Compliance
525 S. Griffin St., Room 512
Dallas, TX 75202
Phone: (972) 850-2650

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows: The covered area is in the county or counties as indicated in the description on the proposal.

Timetables Goals for minority participation Statewide Goals for
for each trade by county and percentage female participation

Until Further Notice	17.2 - Bryan	6.9
	11.0 - Beaver, Cimarron & Texas	
	14.8 - Comanche	
	10.8 - Cotton, Greer, Harmon, Jackson, Jefferson, Kiowa, Stephens & Tillman	
	10.2 - Canadian, Cleveland, McClain Oklahoma, & Pottawatornie	
	9.0 - Alfalfa, Atoka, Beckham, Blaine, Caddo, Carter, Coal, Custer, Dewey, Ellis Garfield, Garvin, Grady, Grant, Harper, Hughes, Johnston, Kingfisher, Lincoln, Logan, Love, Major, Marshall, Murray, Okfuskee, Pontotoc, Roger Mills, Seminole, Washita, Woods, Woodward	
	10.2 - Creek, Mayes, Osage, Rogers, Tulsa & Wagoner	
	10.0 - Cherokee, Kay, McIntosh, Muskogee, Noble, Nowata, Okmulgee, Pawnee, Payne, & Washington	
	3.3 - Adair & Delaware	
	5.6 - LeFlore & Sequoyah	
	6 . 6 - Choctaw, Haskell, Latimer, McCurtain, Pittsburg & Pushmataha	
	2.3 - Craig & Ottawa	

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(Executive Order 11246)
Rev. 11-30-99

10-27-97

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 days of award of any construction subcontract in excess of \$10,000. at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

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CF000900 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
11-20-80

CONSTRUCTION CONTRACT SPECIFICATIONS *
EXECUTIVE ORDER 11246

1. As used in these specifications:

a. "Covered area!" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

d. "Minority" includes: (I) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race); (iii) Asian or Pacific Islander (all persons having origins in any of the original peoples of Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action

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standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and

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female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations responses. c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken. d . Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations. e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above. f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations: by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed. g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents. General Foreman, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter. h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business. I. Direct its recruitment efforts, both oral and

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written, to minority female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process. j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce. k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3 1. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities. m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these Specifications are being carried out. n. Insure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. p. Conduct a review, at least annually, if all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling anyone or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligations to comply, however, is the Contractor's and failure of such a group to fulfill an

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obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be

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required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of

local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program). 16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed employment data as contained under Form PR-1391 (Appendix C to 23 CFR Part 230), and in accordance with the instructions included thereon.

* THESE STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246) SHALL BE INCLUDED IN, AND SHALL BE A PART OF, ALL SOLICITATIONS FOR OFFERS AND BIDS ON ALL FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS OR SUBCONTRACTS IN EXCESS OF \$10,000. EXECUTION OF THE CONTRACT BY THE SUCCESSFUL BIDDER AND ANY SUBSEQUENT SUBCONTRACTS WILL BE CONSIDERED THE CONTRACTOR'S AND SUBCONTRACTOR'S COMMITMENT TO THE EEO PROVISIONS CONTAINED IN THESE STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246).

DATE: August 22, 2012

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CF001273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273--Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

-
- I. General
 - II. Nondiscrimination
 - III. Nonsegregated Facilities
 - IV. Davis-Bacon and Related Act Provisions
 - V. Contract Work Hours and Safety Standards Act Provisions
 - VI. Subletting or Assigning the Contract
 - VII. Safety: Accident Prevention
 - VIII. False Statements Concerning Highway Projects
 - IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
 - X. Compliance with Governmentwide Suspension and Debarment Requirements
 - XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or
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request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine

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compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

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3. Dissemination of Policy: All members of the contractor's staff who

are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is

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expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable

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minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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a. The records kept by the contractor shall document the following:

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply

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to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage

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determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit

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as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

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responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under SS5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sect. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than

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permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio
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permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee

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program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for

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debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked

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in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from

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the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after

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the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors,

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suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL
WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of

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Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more - as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification - First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any

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covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly

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enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a) (2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered

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into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate

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in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal

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agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE
FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR
APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

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b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

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CF001700 CONTRACTORS AFFIDAVIT
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Section 112(c) of Title 23 USC requires as a condition precedent to approval, by the Federal Highway Administration, of the contract for this work that there be filed a sworn affidavit or as unsworn statement subject to Federal perjury laws executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

The sworn affidavit shall be in the form provided and executed by the bidder before a person who is authorized by the laws of this state to administer oaths. The original of such affidavit shall be filed with the Oklahoma Department of Transportation prior to award of the contract. The unsworn statement shall be in the form provided and subject to Federal perjury statutes. The original of such statement shall be filed with the Oklahoma Department of Transportation prior to award of the contract.

TO COMPLY WITH ABOVE REFERENCED SECTION 112(c) OF TITLE 23 USC -
BIDDERS SHALL EXECUTE THE BIDDERS AFFIDAVIT OR UNSWORN STATEMENT
SUBJECT TO FEDERAL PERJURY LAWS INCLUDED IN THIS PROPOSAL.

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CX00210B * DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS
11-30-99
Rev. 06-06-11
POLICY STATEMENT

The Oklahoma Department of Transportation is committed to implementing the Disadvantaged Business Enterprise Program as mandated in 49 CFR Part 26. The stated objectives of the program are:

- * To ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts;
- * To create a level playing field on which DBEs can compete fairly for U.S. DOT assisted contracts;
- * To ensure that the program is narrowly tailored in accordance with the applicable law;
- * To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
- * To help remove barriers to the participation in U.S. DOT assisted contracts;
- * To assist in the development of DBE firms so that they may compete successfully in the marketplace outside of the DBE program.

Failure of the contractor, subcontractor, material supplier or service contractor to carry out the requirements set forth shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract by the State or such action as the State deems appropriate.

BIDDER'S ACTION

When ODOT has established a Disadvantaged Business Enterprise (DBE) contract goal, ODOT will award a U.S. DOT assisted contract only to a bidder who makes good faith efforts to meet the goal.

All bidders shall, with the submissions of their bid, show their intent to meet or exceed the DBE goal established for the project, or propose an adjusted goal accompanied by their submission of good faith efforts. Failure to make the written assurance which includes the names of the DBEs used, the work they will perform, and the price for the work, or failure to demonstrate good faith efforts acceptable to the Department to meet or exceed the DBE goal shall render a bid non-responsive.

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If a bidder can not meet the established DBE goal, the bidder shall document and submit with their bid proposal, justification stating why he or she could not meet the established DBE goal and demonstrate its good faith efforts. To demonstrate good faith efforts to meet the DBE goal, the bidder shall document the steps taken to obtain DBE participation. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. ODOT will review and determine that the information is complete and accurate and adequately documents the bidder's good faith efforts before committing to the award of the contract to the bidder. ODOT will make a fair and reasonable judgement whether the bidder that did not meet the goal made adequate good faith efforts by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts.

If the bidder to whom ODOT proposes to award the contract is able to demonstrate good faith efforts, ODOT may reduce the contractual DBE goal to the bidder's proposed adjusted goal. Acceptance by ODOT of the bidder's proposed adjusted goal does not release the bidder from its contractual obligation to continue to make efforts throughout the duration of the project to utilize DBEs on the project.

If ODOT determines that the bidder to whom ODOT proposes to award the U.S. DOT assisted contract fails to meet the requirements stated above, the bidder will be provided an opportunity for administrative reconsideration. The bidder will be notified by fax within two working days following the bid opening.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning whether it met the goal or made adequate good faith efforts to do so. The bidder will have two working days within which to present their case. The decision on reconsideration will be made by an official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so. The determination will be made by the General Counsel or his designee. The General Counsel or his designee will provide a decision prior to the award of the U.S. DOT assisted contract or the award will be delayed.

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The bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

A written decision on reconsideration will be sent to the bidder, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration is not administratively appealable to the U.S. Department of Transportation.

All bidders shall submit with their bid, completed, signed, and notarized pages 13 of 14 and 14 of 14 of the Special Provision. All bidders shall also complete and submit the DBE pages of the Expedite System (electronic bidding). All listed DBE firms must be currently certified by ODOT as eligible to participate in the DBE program. DBEs also must be listed only in categories of work as shown in the DBE Directory attached to the back of that month's ODOT Short Form Notice. Failure to submit the forms will render the bid non-responsive. In the event of a conflict between the Expedite DBE submission and pages 13 of 14 and 14 of 14, the written submissions on pages 13 of 14 and 14 of 14 will control.

The DBEs submitted on this form shall be considered binding and changes of committed DBEs may only be made after the contract is fully executed, and may only be changed through the procedures established in the DBE Program Manual, VII Contract Performance, Substitution/Replacement of DBEs.

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but is not limited to the good faith efforts found in this Special Provision.

It is the contractor's responsibility to submit the information necessary for ODOT to ascertain compliance with the good faith efforts requirement. Extra cost involved in finding and utilizing DBEs will not be accepted as an adequate reason for the bidder's failure to meet the project DBE goal as long as such costs are reasonable.

The bidder must submit to the Office Engineer Division written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment. This shall be submitted in the form of DBE Confirmation of Intent to Subcontract (DBE-6). The DBE-6 shall be submitted for each DBE listed in the bidder's proposal to meet the advertised goal. This form, along with the DBE's quote listing line items, quantities, and dollar value, must be received no later than ODOT's close of business on the Wednesday following the bid

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opening. Otherwise, the bid shall be considered nonresponsible and shall be rejected by ODOT. The Office Engineer Division and the Civil Rights Division will review each of the apparent low bidders' submittals to determine compliance with 49 CFR Section 26.53(b)(2)(v).

In instances where a DBE is participating in a contract as a joint venture, the joint venture must submit the specific units of work which will be performed by the DBE joint venturer. The DBE joint venturer's portion of the contract work will be submitted as the Contractors' commitment and the advertised goal of the contract becomes the contractual obligation.

In instances where a successful bidder's DBE commitment exceeds the actual DBE contract goal, the advertised goal of the contract remains the contractual obligation.

ASSURANCE OF NON-DISCRIMINATION

The contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Oklahoma Department of Transportation deems appropriate.

GOOD FAITH EFFORTS

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but are not limited to the following good faith efforts: (APPENDIX ~ TO PART 26)

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.

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D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgement would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not sufficient justification for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs to fulfill the DBE contract requirement if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within the industry, membership in specific groups organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of DBE bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

CONTRACTOR ACTIONS AFTER AWARD OF THE CONTRACT

Counting DBE Participation Toward the Goal 26.55

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal. The entire amount of that portion of a contract that is performed by the DBE's own forces is counted, including the cost of supplies and

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materials obtained by the DBE for the work on the contract, including supplies purchased or equipment leased by the DBE(except supplies and equipment the DBE purchases or leases from a prime contractor or its affiliate).

Fees or commissions charged by a DBE firm for providing a bona fide service such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a U.S. DOT assisted contract, count toward the goal, provided those fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.

When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.

Only expenditures to a DBE contractor who performs a commercially useful function may be counted toward a DBE goal.

COMMERCIALY USEFUL FUNCTION

A DBE performs a commercially useful function (CUF) when it is responsible for the execution of the work of its contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. The DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing(when applicable) and paying for the material itself.

To determine whether a DBE is performing a CUF, ODOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work it is actually performing and the DBE credit claimed, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is acting as a pass-through, ODOT will examine similar transactions, particularly those in which DBEs do not participate.

Use of Joint Checks

A joint check is a two party check between a DBE, a prime contractor, and the regular dealer of materials/supplies. Typically, the prime contractor issues the check as payor to the DBE and supplier jointly to guarantee payment to the supplier for materials/supplies used by the DBE.

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A joint check may be used when the following conditions are met:

- * The second party (typically the prime contractor) acts solely as a guarantor
- * The DBE must release the check to the supplier
- * The use of joint checks is a commonly recognized business practice in the industry
- * ODOT approves the practice before it is used

The use of joint checks will not be approved if it conflicts with the commercially useful function (CUF) requirements of 49 CFR Section 26.55. All aspects of the CUF requirements must be fulfilled by the DBE to include negotiating the purchase and delivery of the materials required for the performance of the contract.

The use of joint checks should be short term in nature and there shall be no exclusive ongoing relationship between one prime and one DBE in the use of joint checks, which may bring the DBE's independence into question.

The DBE shall notify the Civil Rights Office prior to the use of joint checks, providing full and prompt disclosure of the circumstances and a request for approval. The Civil Rights Office will review the request and determine whether approval will be granted.

Lease of Use of Prime Contractors' Equipment

The DBE may lease equipment necessary to perform work, where the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the DBE firm. 49 CFR Section 26.55(a)(1) does not allow materials purchased or equipment leased from a prime contractor to count toward the DBE goal. If a DBE uses or leases equipment from the prime contractor, the prime contractor cannot claim credit for the value of that equipment lease toward the DBE goal. If a DBE uses a prime contractor's equipment, it shall be for an unusual circumstance of limited duration, and the DBE shall provide the ODOT a written agreement between the DBE and the prime contractor.

TRUCKING

The certified DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must, itself, own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and

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operates using drivers it employs.

The DBE may lease trucks from another DBE firm including owner-operators certified as DBEs. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE or non-DBE owner operators. The DBE who leases from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessee not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Consistent with normal industry practice, a DBE may lease trucks from a regular equipment dealer whose primary business is sales and leasing of trucks (as opposed to a trucking firm or individual). This cannot be on an ad-hoc basis, but must be long term and the trucks must be under the control of the DBE firm and must be operated in a manner consistent with the CUF requirements of the regulation. The total value of transportation services performed using such trucks can be credited toward meeting a contract goal.

MANUFACTURERS AND MATERIAL SUPPLIERS

If the materials or supplies are obtained from a certified DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted toward the DBE goal. A manufacturer is a firm that operates the or maintains a factory or establishment that produces, on the premises, materials required under the contract as described by the specifications.

If the materials or supplies are purchased from a certified DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted toward the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment described by the specification and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name,

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in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business as provided for in the above paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract-by-contract basis.

In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must also fabricate the pipe. Metal or concrete pipe is specialty pipe which is project specific and is inspected during the manufacturing process. This arrangement provides for no warehousing of metal or concrete pipe and essentially requires the manufacturer to be the supplier. Merely ordering pipe from the fabricator, and in turn selling it to contractors is not consistent with normal industry practice. Contractors normally purchase pipe directly from the manufacturer, thus

eliminating the middleman. Supplying metal or concrete pipe is viewed as brokering and is considered inconsistent with DBE program requirements.

SUBSTITUTION/REPLACEMENT OF DBEs

Substitution or replacement of a DBE will only be permitted or allowed after award and execution of the U.S. DOT assisted contract.

A prime contractor may not terminate for convenience a DBE listed in their contract (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without ODOT's prior written consent.

When a DBE is terminated, or fails to complete the work of the contract for any reason, the prime contractor must make good faith efforts to find another DBE to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work(not necessarily the same work) under the contract as the DBE that was terminated, to the extent needed to meet the DBE goal established in the contract.

When the contractor obtains a substitute DBE, the contractor shall provide the Construction Division with copies of the substitute's subcontract, the Notification Change of DBE Participant(DBE Form 4), and supporting documentation.

If the contractor is unable to replace the DBE with another DBE, then the contractor must provide ODOT with evidence that they have made a good faith effort (Appendix B). The prime contractor must submit to the Construction Division a Request for Waiver of DBE Requirements(DBE Form 5) along with documentation to support they have made a good faith effort. ODOT may adjust the goal as appropriate.

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If a contractor fails to comply with this section, appropriate administrative remedies as listed in the section titled Administrative Remedies may be taken.

PROMPT PAYMENTS

To ensure that all prime contractors' obligations under U.S. DOT contracts are met, the prime contractor shall pay all subcontractors for satisfactory performance of their contracts no later than fifteen days after receipt of each progressive payment from ODOT. The prime contractor must further make prompt return of retainage held to the subcontractor or DBE within fifteen days after the subcontractor's work is satisfactorily completed, whether the prime contractor's work is complete or not. The term "satisfactorily completed" is defined as when; 1)ODOT finds the work completed in accordance with the Plans and Specifications, 2)any required paperwork, including material certification, payrolls, etc., have been received and approved by ODOT and 3)the Department has determined the final quantities on the subcontractor's portion of the work. Failure to comply with the prompt payment and return of retainage provisions of the contract may result in sanctions under the contract, as listed in Administrative Remedies.

Any delay or postponement of payment among the parties may take place only for good cause, with ODOT's written approval. The explanation from the prime contractor must be made in writing to the Resident Engineer. ODOT will provide internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontracted portions of the contract in accordance with Special Provision 109-8(a-b)09.

Prime contractors must include in their subcontract agreements notifying subcontractors of their right to prompt payment and return of retainage under 49 CFR part 26.29.

Prime contractors must include in their subcontracts language providing that prime contractors will utilize the alternative dispute resolution program to resolve payment differences. ODOT will provide the parties with a list of approved mediators and the parties must agree on a mediator within five days. ODOT will provide an approved mediator at no charge for disputes between DBEs and prime contractors. If the parties cannot agree to use one of the mediators from the list provided by the Department, then the subcontractor and prime contractor will be responsible for the costs incurred for the services of another mediation service.

GOAL WAIVERS

In the case where a contractor cannot meet the DBE goal of a contract, they should request a waiver of that portion of the DBE goal which will not be met. The request will be subject to the following:

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* A request for waiver will be initiated by the prime contractor at the time he or she reasonably knows that despite good faith efforts the contract goal will not be achieved. The request will be in writing and will document all good faith efforts made to meet the goal.

* The request for waiver will be submitted for review to the Resident Engineer and will be submitted on the Request for Waiver of DBE Requirements (DBE Form 5). The Resident Engineer will forward the request to the Construction Division. DBE goal waivers will be approved or denied by the Construction Division and Civil Rights Division - External Program. ODOT will make the decision on the waiver and inform the Division Office of FHWA on full oversight projects.

* If at the completion of the project the contractor has failed to meet the DBE goal, does not have an approved waiver, and has not demonstrated good faith efforts to meet the goal, the contractor will be assessed liquidated

damages for the difference between the contract goal and the actual DBE participation achieved. The Department shall deduct the liquidated damages from subsequent progressive estimates. In the event insufficient earnings remain for the deduction of liquidated damages, the Department may claim against the contractor's bond, suspend the contractor under performance suspension, withhold further proposals, or suspend prequalification.

* In those instances when the goal is not met due to a change in quantity which occurs through no fault of the contractor, but due to ODOT, a goal waiver will not be required for the contractor. Instead, a brief explanation from the Residency at the time the DBE Final Payment Form (DBE Form 3) is submitted, along with the statement of overruns and underruns, will suffice as documentation.

Administrative Remedies

The following administrative remedies may be invoked when the federal DBE contractual requirements are not met by a contractor, and if the contractor has failed to provide evidence of a sufficient good faith effort to meet said provisions:

- Suspension of processing progressive estimates
- Liquidated damages
- Refusal to issue proposals
- Suspension of work on the project
- Suspension of prequalification
- Debarment
- Removal of Certification

RECORD KEEPING REQUIREMENTS

The prime contractor will keep such records as are necessary to determine compliance with the DBE contract obligations. The records kept by the

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contractor will indicate:

1. The name(s) of DBEs or other subcontractors, the type of work being performed, and payment for work, services and procurement.
2. Documentation of correspondence, verbal contracts, telephone calls, etc., to obtain services of DBEs on the project.
3. The prime contractor shall maintain a copy of the DBE trucking firm's list of trucks to be used on that project. This shall be provided to the prime by the DBE prior to the DBE beginning the work of their hauling agreement. This list will be sent along with the actual hauling agreement to the Construction Division for approval, and the prime contractor will also furnish it to the Resident Engineer for monitoring activities.

Upon request, the prime contractor shall submit all subcontracts, purchase orders, contracts, agreements, and financial transactions, including canceled checks, executed with DBEs with the reference to records referred to in this provision, in such form, manner, content prescribed by ODOT.

Once the project begins, prime contractors will be required to submit Monthly Payment Log Forms (DBE Forms 2A or 2B) to the Resident Engineer each month for the duration of the project. The DBE Form 2A, completed by non-DBE prime contractors, will record payments made to all DBE firms providing materials or services to the project, whether listed in the Contract to meet a project goal or not. The Form 2B, completed by DBE prime contractors, will record payment made to all non-DBE subcontractors. Listed on the forms should be all payments made, including final payment and return of retainage. These forms must be received by the Resident Engineer no later than the 15th of the following month.

For contracts with a specified project DBE goal, the contractor shall submit to the Resident Engineer a DBE Final Payment Report (DBE Form 3A), which replaces the Summary Form 1. The contractor should list all DBEs as in the contract and summarize total amounts paid to DBEs and the project goal amount for each DBE. In instances where the contract is performed as a joint venture and one of the members of the joint venture is a DBE, the joint venture should summarize the total amounts paid to the DBE joint venturer for work performed. If the contractual goal is not met, the goal waiver procedures set forth in Section VII, Contract Performance, Goal Waivers, will apply.

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REGULAR DEALERS (MATERIAL SUPPLIERS)

NAME	DESCRIPTION OF MATERIAL	60% OF AGREEMENT (2)

NOTE: BROKERAGE, PACKAGERS, AND PASS THROUGHES DO NOT QUALIFY AS DBE PARTICIPATION. MATERIAL SUPPLIERS AND OWNER/OPERATORS DO NOT QUALIFY AS SUBCONTRACTORS.

SUBTOTAL (2) _____
 TOTAL (1+2) _____
 % OF BID _____

 COMPANY NAME

BY: _____

TITLE: _____

Subscribed and sworn before me this _____ day of _____ year _____.

Notary Public _____.

My commission expires _____.

SEAL

DATE: February 25, 2015

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NEWCX00220A * D. B. E. ASSURANCE
CX00220A

Rev. 03/31/14

All bidders shall, with the submission of their bid, show their intent to meet or exceed the Disadvantaged Business Enterprise (DBE) goal established for the project, or propose an adjusted goal accompanied by their submission of good faith efforts. Failure to make the written assurance which includes the names of the DBE's used, the work they will perform, and the price for the work, or failure to demonstrate good faith efforts acceptable to the Department to meet or exceed the DBE goal shall render a bid non responsive.

In accordance with 49 CFR Part 23, and the applicable Special Provisions the undersigned (check box a. or b.):

- () a. Assures to meet or exceed the established DBE goal as set forth on pages 15 of 16 and 16 of 16 of Special Provision CX00210B, "Disadvantaged Business Enterprise Programs".
- () b. Cannot meet the established DBE goal and assures to meet a DBE goal of ___% as set forth on pages 15 of 16 and 16 of 16 of Special Provision CX00210B, "Disadvantaged Business Enterprise Programs". A letter, along with evidence, is submitted with the bid indicating the good faith efforts to meet the established DBE goal and denoting therein how the new DBE goal is achieved.

All bidders shall submit with their bid, completed, signed, and notarized pages 15 of 16 and 16 of 16 of Special Provisions CX00210B, "Disadvantaged Business Enterprise Programs". All listed DBE firms must currently be certified by ODOT as eligible to participate in the DBE Program. They also must be listed only in the categories of work as shown in the DBE Directory attached to the back of that month's ODOT Short Form Notice. Failure to submit the completed, signed and notarized form at the time of the bid submission will render the bid non responsive.

The DBEs submitted on this form shall be considered binding and may only be exchanged through the procedures established in the DBE Program Policy Manual.

Organization

By: _____ Title: _____

Subscribed and sworn to me this ___ day of _____, _____.

Notary Public _____

My Commission Expires: _____

DATE: February 25, 2015

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APPENDIX E 3

GOOD FAITH EFFORTS

To demonstrate good faith efforts to meet the DBE goal, the bidder shall document the steps taken to obtain DBE participation.

Good Faith Efforts should include, but not be limited to:

- a. Attending any pre bid meetings at which DBEs could be informed of contracting and subcontracting opportunities:
- b. Advertising in general circulation, trade association, and minority focus media concerning the subcontracting opportunities:
- c. Providing written notice to a reasonable number of certified DBEs, who have capabilities and expertise pertinent to the work of the required subcontract, that their interest in the contract is being solicited. This notice shall be in sufficient time to allow the DBEs to respond to the written solicitation:
- d. Following up initial solicitations of interest by contacting DBEs to determine with certainty if the DBEs are interested:
- e. Selecting portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goals being achieved. This may include, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation;
- f. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract;
- g. Negotiating in good faith with interested DBEs. The evidence of such negotiations should include the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specification for the work selected for subcontracting; and a statement as to why additional agreements could not be reached for DBEs to perform the work;

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- h. Not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- i. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- j. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services; and
- k. Effectively using the services of available minority community organizations; minority contractors' groups; local, state and federal minority business assistance offices; and other organizations as allowed on a case by case basis to provide assistance in the recruitment and placement of DBEs.

DATE: January 02, 2013

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CZ002300 CONTRACT DISPUTE RESOLUTION PROCEDURE

OKLAHOMA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
CONTRACT DISPUTE RESOLUTION PROCEDURE

Rev. 09-27-12

This Special Provision supplements and where in conflict supersedes the provisions of Sections 104.06, 105.18, 108.07, 109.04 and 109.10 of the 2009 Standard Specifications for Highway Construction, English and Metric, as applicable. Units of measurement are provided in the subsections in both English and Metric equivalents. The units applicable for this project will be those specified in the project plans.

CONTRACT DISPUTE RESOLUTION PROCEDURE

SECTION 1.

(a) Contractors and Resident Engineers should use all reasonable efforts to reach accord as to changes and perceived changes in the nature and quantity of work to be performed. However, if the Contractor and the Resident Engineer cannot reach an immediate agreement which can be supported by a supplemental agreement under the contract or a change in plans, it will be the responsibility of the Contractor to initiate a claim. Claims must be initiated by providing oral notice of intent to file a claim followed, with written confirmation of the notice within seven(7) calendar days as provided in the Standard Specifications Section 104.06. The Contractor must provide written notice of intent to file a claim to the Resident Engineer identifying work which the Contractor believes is not covered by the contract before starting on the disputed work. If the Contractor believes that work in progress may, due to changed conditions, have become subject to a claim, the Contractor must submit his written notice of intent to file a claim before continuing with the affected work. The submission of a notice of intent to file a claim by a contractor in accordance with the Standard Specification Section 104.06 is a mandatory prerequisite for the consideration by the Department of any claim submitted under the terms of this contract. Failure to provide the required notice of intent to file a claim shall constitute a waiver of the claim. It is a condition precedent to any recovery on a claim under this Contract, that the Contractor must provide a written notice of intent to file a claim to the Resident Engineer pursuant to this Section 1.

(b) The claim must be submitted in the form required by Section 105.18 within ninety (90) calendar days of completion of the disputed or affected work. Failure to submit the claim within ninety (90) calendar

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days will preclude recovery of extra compensation or award of additional time for the disputed or affected work.

(c) The claim will be complete and will contain all of the information and the certification required by Section 105.18 when submitted. Requests for additional compensation will be documented as required by Section 109.04. Only those items listed in Section 109.04 will be considered as compensable for disputed or affected work. Requests for extension of contract time for completion of disputed or affected work will be considered in accordance with Section 108.07. Requests for extension of contract time must be supported by a critical path method (CPM) schedules prepared in accordance with the Standard Specification Section 108.03(b) reflecting both the planned construction schedule and the actual sequence of the construction. Compensation for delays caused by disputed or affected work will be paid only for those items listed in Section 109.10.

(d) The Resident Engineer will review and respond to the claim pursuant to the provisions of Section 105.18(D). Time for claims review by the Resident Engineer as specified in Section 105.18 will begin upon receipt of the claim by the Resident Engineer and determination by the Resident Engineer that the claim is complete. A claim is complete when the claim contains all information specified by Section 105.18 and such additional supporting information or documents as the Resident Engineer may deem necessary for proper evaluation of a specific claim. If the Resident Engineer requires additional information or documentation, the Contractor shall have fifteen (15) calendar days from the date of the Resident Engineer's request to provide the required information or documentation. Failure to provide requested information or documentation within the specific time will preclude recovery of extra compensation or award of additional time for the disputed or affected work. It is specifically agreed by the parties herein that, as a condition precedent to appeal the denial of a Contractor's claim to the Director of Operations, the Resident Engineer must deny the Contractor's claim in whole or in part pursuant to, and in compliance with, the provisions of this Section 1.

SECTION 2.

(a) In the event that a Contractor's claim is denied in whole or in part by the Resident Engineer, the Contractor may appeal this denial to the Director of Operations by:

1. Forwarding a copy of his claim in person or by certified mail with all supporting documents, the written response of the Resident Engineer if any, or a statement by the Contractor that no written response was issued by the Resident Engineer pursuant to Section 105.18(D), and any written agreement concerning the claim.

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2. Submit a statement setting forth in detail the grounds upon which the Contractor appeals the Resident Engineer's decision.
3. The appeal must be submitted to the Director of Operations within thirty (30) calendar days of the denial of the claim. If the appeal is not submitted within this time frame, the decision of the Resident Engineer shall become final and binding.
4. It is a condition precedent to any recovery on a written appeal of any denial of a Contractor's claim under this Contract, that the Contractor must provide a written appeal to the Director of Operations at the Department of Transportation at 200 NE 21st St., Oklahoma City, OK 73105-3204

(b) Upon receipt of the appeal and all documents set forth in Subsection (a) of this section, the Director of Operations shall review the Contractor's claim and determine if additional documentation, information, or other factual data are required to make a final decision on the Contractor's claim. If additional information is required, the Director of Operations shall, within thirty (30) calendar days, notify the Contractor in writing stating what additional information is required. The Contractor shall thereafter have fifteen (15) calendar days to provide the requested information unless otherwise agreed in writing. Failure to provide the requested information within the time provided shall void any claims dependent upon such additional information and shall result in the decision of the Resident Engineer becoming final and binding as to all matters for which additional information was requested. Within forty-five (45) calendar days of receipt of the requested additional information, or if additional information is not requested within forty-five (45) calendar days of the receipt of the appeal, the Director of Operations may dispose of the claim by change order or supplemental agreement in accordance with Section 104.04 of the Standard Specifications. If no agreement is executed between the Department and the Contractor within that forty-five (45) calendar days, the Director of Operations within five (5) calendar days thereafter shall issue his decision on each item of the Contractor's appeal. The decision shall state, as to each item of the appeal, whether the item is approved in whole or in part, or disapproved. If all or part of an item is disapproved, the Director of Operations shall cite his basis for disapproval. The Director of Operations' decision shall be mailed to the Contractor by certified mail. In the event that the Director of Operations shall fail to issue his decision in the time provided in this section and any extensions agreed to in writing by the Department and the Contractor, the claim shall be deemed denied as to any matter not previously agreed to in writing and the Contractor may proceed with his claim as set forth in Section 3 to mediate the claim dispute or the Contractor will forfeit any further

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right to pursue the claim in any forum. It is specifically agreed by the parties herein that, as a condition precedent to mediating a Contractor's claim, the Contractor's appeal must be denied in whole or in part by the Director of Operations pursuant to, and in compliance with, the provisions of this Section 2.

SECTION 3.

(a) If the Contractor is dissatisfied with the final decision of the Director of Operations, the Contractor must request mediation of his claim in accordance with the most current Edition of the Construction Industry Mediation Rules of the American Arbitration Association, as such rules are herein modified. The request for mediation shall be made within forty-five (45) calendar days of the date of the Director of Operations' final decision or denial of the claim pursuant to the provisions of Section 2.

(b) The Construction Industry Mediation Rules of the American Arbitration Association as applicable to Contractor's claims resulting from contracts with the Department are modified and amended to provide that the mediation shall be held at the Department of Transportation Building in Oklahoma City, Oklahoma, or at any other convenient location agreeable to the mediator and the parties.

(c) Mediation may be continued as required to promote optimum utilization and success with this dispute resolution procedure. If mediation is considered at an impasse by the mediator, the mediator may terminate mediation as provided by the Mediation Rules. It is specifically agreed by the parties herein that, as a condition precedent to filing any legal action in the District Court of the State of Oklahoma, the Contractor's claim must be mediated pursuant to this Section 3, and the mediation must have been terminated under the Mediation Rules without a settlement agreement of the parties.

SECTION 4.

(a) If mediation is unsuccessful and the Contractor desires to further pursue resolution of a disputed claim, the Contractor may seek relief by filing an action in district court within ninety (90) days of the termination of mediation as provided by the laws of the State of Oklahoma. In all such instances, only those claims which have been presented for consideration in accordance with the Standard Specifications and the dispute resolution procedure provided in these special provisions may be the subject of an action in district court. In all such actions, venue shall be the District Court in Oklahoma County. It is specifically agreed by the parties to this contract that, as an exception to 12 O.S. Section 936, actions brought under this contract shall not be subject to the award of costs or attorney's fees to the prevailing party. It is specifically agreed by the parties that,

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as a condition precedent to the filing of any Contractor claim, counterclaim, third-party claim or set off, and any recovery thereon in a legal action in district court, such Contractor claim, counterclaim, third-party claim or set off must have been included as part or all of the Contractor's claim presented pursuant to Sections 1, 2, and 3 of this Contract Dispute Resolution Procedure or it will be waived by the Contractor in any further action.

(b) The Department and the Contractor may agree to jointly petition for any action to be referred for binding arbitration by order of the district court. As a part of any joint petition for binding arbitration, the parties shall stipulate that such arbitration shall be conducted under the most current Edition of Construction Industry Arbitration Rules of the American Arbitration Association and that such rules shall be modified and amended as follows:

1. Hearings shall be held at the Department of Transportation building in Oklahoma City, Oklahoma, except as may be otherwise agreed by the arbitrator and the parties.
2. Except as mutually agreed by the parties, the dispute shall be heard and determined by one neutral arbitrator.
3. The arbitrator shall not award interest, costs of the prosecution, or defense of the claim, or attorney fees.
4. The decision or award by the arbitrator when made shall be final and non-appealable except as provided in the Uniform Arbitration Act, 12 OS Section 1851 et seq. Both the Contractor and the Department of Transportation shall be bound by the arbitration award for all purposes, and judgment may be entered upon it in accordance with applicable law.

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CZ002850

NO.2 PROPOSAL SHEET

Jan., 1962
Rev. October 1986
Rev. January 1988

The undersigned, as bidder, declares under oath that the only person or parties interested in the foregoing proposal as principals are those named herein: that this proposal is made without either, directly or indirectly, entering into any agreement, participating in any collusion or otherwise taking any action in restraint of free competitive bidding in connection therewith; that the undersigned has no financial interest in, or other affiliations in a business way with any other bidder for the contract on this project; that careful examination of the form of contract, instructions to bidders, profiles, grades, specifications, and the plans has been made, and that careful examination of the locations, conditions and classes of materials of the proposed work has been made; and the undersigned agrees to provide all the necessary machinery, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer, at the unit price as above set forth.

It is understood that in case of any discrepancy between the plans, general specifications and the special provisions, the plans will govern over Standard Specifications and Supplemental Specifications; Supplemental Specifications will govern over Standard Specifications; Special Provisions will govern over Standard Specifications, Supplemental Specifications and plans.

The undersigned further proposes to enter into the contract and furnish satisfactory bond to the Department of Transportation within ten days of award to the undersigned; to commence work as directed by the work order from the Construction Engineer; and to complete the entire work within the allotted contract time after work is authorized. The time limit and other limiting conditions herein set forth are hereby accepted and if such requirements are changed by bidder, it is understood that such change will invalidate this bid.

In considering award of contract the Oklahoma Transportation Commission may require a schedule of equipment the bidder proposes to use on this project and a schedule showing progress to be made during construction.

Attached is a Certified or Cashier's Check or Bid Bond equal to five percent (5%) of the bid made payable to the Oklahoma Department of Transportation as a guarantee of good faith and which if the contract is awarded to the undersigned, it is agreed will be forfeited as liquidate damages to the State of Oklahoma in the event of failure of the undersigned to enter into contract and furnish satisfactory bond to the Department of Transportation within ten days after award.

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CZ002975 * BIDDER'S AFFIDAVIT - STATEMENT UNDER PENALTY
BID PROPOSAL AFFIDAVIT
STATEMENT UNDER PENALTY OF PERJURY OF PERJURY
09/29/11

I _____, as the prospective participant or as the authorized agent of _____ the Firm, Association or Corporation submitting this bid, and with full knowledge and authority, do hereby make and sign this unsworn statement under penalty of perjury:

A. I have read and agree to be bound by the provisions of Special Provisions Text CZ002300, Special Provisions For Contract Dispute Resolution which provides a required succession of actions for contract dispute resolution which is incorporated with this bid and made a part of this bid proposal.

B. I have read and agree to comply with and be bound by the provisions of Special Provisions Text 109-8(a-b)09, Special Provisions For Payments To Subcontractors, to which requires prompt payment for services or materials provided by subcontractors, service companies or material suppliers which is incorporated with this bid and made a part of this bid proposal. (49 CFR 26.29)

C. I understand that the provisions of FHWA Form 1273 are incorporated by reference into this agreement and that all subcontracts which may be entered into for the purposes of performing work required in this bid shall be subject to the provisions of FHWA Form 1273 shall have FHWA Form 1273 incorporated therein.

D. I state under penalty of perjury that neither I nor any owner, officer or employee of the above named firm, association or corporation I represent, have either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with the bid submitted herewith. (23 CFR 635.112)

E. I hereby make the following disclosures concerning business relationships:

1. As the prospective participant or as the authorized agent of the above named firm, association or corporation, I am authorized to submit this bid. As the maker of this unsworn statement, I hereby disclose the nature and existence of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, consulting engineer, or other party to the project, or any of their employees is as follows: _____

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2. That any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the above named company, and any officer or director of the architectural or engineering firm, or other party to the project is as follows: _____

3. That the names of all persons having any such business relationship and the positions they hold with their respective companies or firms are as follows: _____

(If none of the business relationships herein above mentioned exist, maker of this unsworn statement should so state by entering the word NONE after each statement. (61 O.S. Section 108))

F. For purposes of submission of this competitive bid, I certify:

1. I am the duly authorized agent of the above named firm, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the fact pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;

2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and

3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:

a. to any collusion among bidders in a restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,

b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor

c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

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4. I certify, if awarded the contract, whether competitively bid or not, neither the Contractor nor anyone subject to the Contractor's direction or control has paid, given or donated, or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement is attached.(74 O.S. Section 85.22)

G. I certify that neither I nor any owner, officer or other principal of the firm, organization or corporation submitting this bid;

1. Are presently excluded or disqualified;

2. Are presently indicted for or otherwise criminally charged by a governmental entity, (Federal, State or local) with commission of, or have been convicted or subject to civil judgment within the past three (3) years for, any of the following offenses:

a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

b. Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

d. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects my present responsibility;

3. Have had one or more public transactions, (Federal, State or local), terminated within the preceding three (3) years for cause or default.(49 CFR 29.335)

H. I understand that if the project which is subject to this bid proposal is financed in whole or part by federally furnished funds, that if I or the firm, association or corporation I represent or any owner, officer, employee or agent thereof knowingly makes a false statement, representation, report or claim as to the character, quality, quantity or cost of materials used or to be used, the quantity or quality of work performed or to be performed, or make any false statement or representation as to a material fact in any statement, certificate or report, that I, other responsible individual, or the firm, association or corporation I represent, may be subject to prosecution under the laws of the United States. (18 USC Sections 1001, 1020)

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Date and Place

Name of Contractor as shown on
Prequalification Application

Signature of Prospective Participant

Printed name of Prospective Participant

The Maker of this Statement's title or
position with Prequalified Contractor

UNSWORN STATEMENT UNDER PENALTY OF PERJURY INFORMATION:

By affixing his/her signature to this unsworn statement, the bidder understands that he/she is under penalty of perjury and is fully bound thereby.

