CONTRACT NO. 02423R

Backsfed.072023

# STATE OF MONTANA
# DEPARTMENT OF TRANSPORTATION
# BID PACKAGE

Sealed bids for construction of this project will be received by the Montana Department of Transportation, Construction Contracting Bureau, Room 101, 2701 Prospect, Helena, Montana until 9:00 a.m. on July 20, 2023. All bids will then be publicly opened, reviewed for correctness, and then publicly read.

Federal Aid Project(s):

CRSII – IM 90-5(85)274 I-90 Incident Management

Bid proposals, Plans, Standard Specifications, Detail Drawings, and Standard Contract Forms are on file for examination and may be obtained from the Construction Contracting Bureau of the Montana Department of Transportation, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana 59620-1001.

Prime bidders use the Electronic Bid System or bid on-line through Bid Express to produce a bid containing Proposal Forms, Schedule of Items, and Disadvantaged Business Enterprises (DBE) Requirements (if applicable).

**CONTRACT #02423R**
**AWARDED ON: AUGUST 1, 2023**
**TO: MONTANA LINES, INC**

MONTANA DEPARTMENT OF TRANSPORTATION

Loran Frazier, Chairperson
Montana Transportation Commission

Malcolm “Mack” Long
Director of Transportation

Contract No.02423R
SEH:MH:9856000AWD-101

AWARD COPY

# CURRENT QUESTIONS & ANSWERS

## 101 - I-90 INCIDENT MANAGEMENT - July 20, 2023

### Notifications

No Notices available for this project.

### Addendums

**-1-**

Submitted: Wednesday 19-JUL-2023 12:00 PM

An Addendum has been posted for this project: **ADDENDUM**

To download the addendum bid files: Bid Express™ Secure Internet Bidding

### Clarifications

**-1-**

Submitted: Thursday 22-JUN-2023 12:45 PM

This project is being re-advertised. Changes may have been made to the prior bid package. If you submitted a question when this project was previously advertised and believe your question is still applicable, please ask the question on the Q&A forum again. By doing so, your question and MDT's corresponding answer will become part of the contract.

**-2-**

Submitted: Tuesday 18-JUL-2023 01:55 PM

An addendum will be issued:

The pedestals at Site 9 adding 2 EA of CONTROL UNIT, 617 903 100 with the following special provision: **CONTROL UNIT** **(See end of Q&A)**

### Questions

**-1-**

Submitted: Monday 17-JUL-2023 09:08 AM

Company: Montana Lines, Inc.

Contact: Estimating

The Electrical Quantity Summary on Sheet E1 indicates that site 5 is the location of the 1ea SERVICE ASSEMBLY-MODIFY item. Sheet E16 indicates a new service is to be installed at Site 5 per detail on Sheet E2. Further, the service details shown on Sheet E11 indicate they are for Site 5. Please clarify the quantity and location of Service Assembly Modify Item. Please also clarify which service(s) are detailed on Sheet E11.

Answer

Submitted: Tuesday 18-JUL-2023 02:15 PM

The callout on sheet E16 is in error. The Service Assembly-Modify item refers to the electrical service already in place installed by Park Electric Coop to be modified at site 5. The service wiring diagram and underground service assembly detail on sheet E11 pertain to Site 5 only.

**-2-**

Submitted: Monday 17-JUL-2023 09:15 AM

Company: Montana Lines, Inc.

Contact: Estimating

The Electrical Quantity Summary indicates 800 LNFT of 1.5" PVC conduit at Site 10. Sheet E21 does not include 1.5" conduit. Please clarify.

Answer

Submitted: Tuesday 18-JUL-2023 02:20 PM

The conduit schedule on sheet E21 is in error. Use 1 1/2 plastic conduit for conduit run A at Site 10. **REVISED ELECTRICAL SHEET E21**

**-3-**

Submitted: Monday 17-JUL-2023 09:19 AM

Company: Montana Lines, Inc.

# CURRENT QUESTIONS & ANSWERS

Contact: Estimating
Many of the electrical service callouts state 120/240 volt overhead electrical service is by the serving utility company. What materials and services are provided by the utility companies vs. by the contractor in these instances?
Answer
Submitted: Tuesday 18-JUL-2023 02:25 PM
Contractor shall furnish and construct all elements shown in service assembly with the exception of the service line which will be connected to the meter base by the utility.

**-4-**
Submitted: Monday 17-JUL-2023 09:17 AM
Company: Montana Lines, Inc.
Contact: Estimating
Site 5 shows 3ea SIG-TRAF 2 COL-2 WAY 12, while the Electrical Quantity Summary indicates 2ea. Similarly, Site 9 shows 8ea on OH structures and 4ea on road closure gates, while the Electrical Quantity Summary on Sheet E1 indicates 6ea. Please clarify.
Answer
Submitted: Tuesday 18-JUL-2023 02:21 PM
Quantity summary on sheet E1 is in error. 1050.0 ft of conduit shown for Site 10 is in the wrong column and should be shown for Site 9. Quantity for SIG-TRAF 1 COLOR-1 WAY 12 is 12 EA at Site 9 and 3 EA at Site 5. An addendum will be issued for:
Item # 617 483 110
Item description: SIG-TRAF 1 COLOR-1 WAY 12
Item pay unit is: 44 Each
**REVISED ELECTRICAL PLAN SHEET E1**

**-5-**
Submitted: Monday 17-JUL-2023 09:27 AM
Company: Montana Lines, Inc.
Contact: Estimating
What length gate arm is needed for pole 1A at Site 15?
Answer
Submitted: Tuesday 18-JUL-2023 02:46 PM
Calculate gate arms using the detailed drawing on sheet E16. At Site 15 you may assume a shoulder width of 8 ft on Old U.S.10.
**REVISED ELECTRICAL SHEET E16**

**-6-**
Submitted: Monday 17-JUL-2023 09:25 AM
Company: Montana Lines, Inc.
Contact: Estimating
The Advanced Warning Beacon Mount detail, Sheet E10, shows a junction box, 1.5” rigid steel, conduit bodies, and mounting hardware. These items are not mentioned in the Method of Measurement and Basis of Payment of Special Provision 23. Please indicate how are these items to be paid?
Answer
Submitted: Tuesday 18-JUL-2018 02:52 PM
Include the junction boxes, 1.5" rigid steel, conduit bodies, and mounting hardware in payment for SOL SIG-TRAF 1 COLOR-1 WAY 12.

**-7-**
Submitted: Monday 17-JUL-2023 09:37 AM
Company: Montana Lines, Inc.
Contact: Signing
In providing staking and sign calculations, please confirm that the Department will include elevation differences at the Overhead Structure locations.

# CURRENT QUESTIONS & ANSWERS

Answer
Submitted: Wednesday 19-JUL-2023 09:15 AM
Yes, MDT will provide staking that includes the elevation differences at the Overhead Structure locations.

**-8-**
Submitted: Monday 17-JUL-2023 09:59 AM
Company: Montana Lines, Inc.
Contact: Estimating
Sheet E20 indicates 2.0" PVC is to be installed at Site 9, while Electrical Quantity Summary includes none for Site 9. Please clarify.
Answer
Submitted: Tuesday 18-JUL-2023 02:53 PM
Quantity summary on sheet E1 is in error. The estimated quantity for CONDUIT - PLASTIC 2 IN is 1050.0 LNFT at Site 9, and zero at Site 10.

1. CONTROL UNIT

A. Radio equipment will be state furnished and installed. Have the project manager notify Phil Balsley of MDT (406-444-6305) when the cabinet is in place and ready for installation of radio equipment.

B. Furnish a NEMA type 3R metal control cabinet large enough to house all equipment specified but no less than 17” wide x 27” high x 16” deep. Provide a solid-state dual circuit that operates the flashing signals in a wigwag configuration. Include the cost of cabinets, circuit breakers, relays, terminal blocks, wiring, and any miscellaneous equipment as part of this bid item. Mount breakers, relay and terminal block to one side of the cabinet leaving room for state furnished/installed radio equipment. Include the cost of the 6” x 6” wood post as part of this bid item.

C. Basis of Payment. Payment will be for each control unit in place and operational.

CONTRACT NO. 02423R

Montana Department of Transportation
Construction Contracting Bureau

Date(s) Issued:
July 19, 2023

A D D E N D U M

For The Following Project(s)
To Be Let On:
July 20, 2023

101 – I-90 Incident Management
CRSII-IM 90-5(85)274

ADDENDUM NO. 1
ATTACHMENT NO. 1

REVISED SCHEDULE OF ITEMS
Changing quantity for Item #:
617 483 110 – Sig Traf 1 Color 1 Way 12 – 44.00 Each
Adding Item:
617 903 100 – Control Unit – 2.00 Each

INSTRUCTIONS – READ CAREFULLY

Load the electronic amendment file while in the opened project file to apply the addendum. In order to be responsive, the Schedule of Items printout on projects with addendums must show the addendum(s) applied at the bottom of each page.

Revised documents supersede and replace the documents you now have. New documents supplement the documents you now have. Make the necessary changes in your bidding documents.

Darin Reynolds, Bureau Chief

MONTANA DEPARTMENT OF TRANSPORTATION
SCHEDULE OF ITEMS

CONTRACT ID: 02423

PROJECT: CRSII-IM 90-5(85)274 (9856085000)
I-90 INCIDENT MANAGEMENT

| PROP LINE NO. | ITEM NUMBER | ITEM DESCRIPTION | UNIT OF MEASURE | QUANTITY |
|---|---|---|---|---|
| | | SECTION 0001 - GUARDRAIL, SIGNING, ELECTRICAL | | |
| | | Billing District 53% Butte District 47% | | |
| 0010 | 104 030 010 | MISCELLANEOUS WORK | UNIT | 10,000.00 |
| 0020 | 107 000 020 | CONTAMINATED SOIL | UNIT | 10,000.00 |
| 0030 | 109 200 005 | MOBILIZATION | LS | 1.00 |
| 0040 | 208 010 000 | BMP ADMINISTRATION-LS | LS | 1.00 |
| 0050 | 208 010 005 | PAR BMP ADMINISTRATION-LS | LS | 1.00 |
| 0060 | 208 010 200 | TEMPORARY EROSION CONTROL-FIXED | UNIT | 500.00 |
| 0070 | 551 020 030 | CONCRETE-CLASS GENERAL | CUYD | 3.00 |
| 0080 | 606 010 150 | GUARDRAIL-STL/BR APPR-TY 1 | EACH | 1.00 |
| 0090 | 606 010 330 | MGS GUARDRAIL | LNFT | 3,700.00 |
| 0100 | 606 010 335 | MASH W-BEAM TERMINAL SECTION | EACH | 16.00 |
| 0110 | 606 010 345 | MGS ONE-WAY DEPARTURE TERMINAL SECTION | EACH | 16.00 |
| 0120 | 606 010 385 | REMOVE GUARDRAIL | LNFT | 50.00 |
| 0130 | 616 323 114 | CONDUIT-STEEL 1 1/2 IN RIGID | LNFT | 210.00 |
| 0140 | 616 343 914 | CONDUIT-PLASTIC 1 1/2 IN | LNFT | 1,450.00 |
| 0150 | 616 343 920 | CONDUIT-PLASTIC 2 IN | LNFT | 20,312.00 |
| 0160 | 616 783 007 | PULL BOX-COMPOSITE TYPE 2 | EACH | 110.00 |
| 0170 | 617 000 000 | FOUNDATION-CONCRETE | CUYD | 68.00 |
| 0180 | 617 000 050 | POLES-TREATED WOOD CLASS 4 | LNFT | 450.00 |
| 0190 | 617 000 060 | GATE-ROAD CLOSURE | EACH | 34.00 |
| 0200 | 617 033 214 | CABLE-COPPER 3AWG14-600V | LNFT | 628.00 |
| 0210 | 617 033 314 | CABLE-COPPER 5AWG14-600V | LNFT | 21,760.00 |
| 0220 | 617 123 104 | CONDUCTOR-COPPER AWG4-600V | LNFT | 10,219.00 |
| 0230 | 617 123 108 | CONDUCTOR-COPPER AWG8-600V | LNFT | 9,860.00 |
| 0240 | 617 123 110 | CONDUCTOR-COPPER AWG10-600V | LNFT | 48,258.00 |
| 0250 | 617 303 300 | HIGH EFFICACY LUMINAIRE LED | EACH | 34.00 |
| 0260 | 617 333 000 | SERV ASSEMBLY-MODIFY | EACH | 1.00 |
| 0270 | 617 333 100 | SERV ASSEMBLY | EACH | **44.00** |
| 0280 | 617 483 110 | SIG-TRAF 1 COL-1 WAY 12 | EACH | 37.00 |
| 0290 | 617 523 010 | SOL SIG-TRAF 1 COLOR-1 WAY 12 | EACH | 48.00 |
| 0300 | 617 673 200 | SIG STANDARD TYPE 1-200 | EACH | 24.00 |
| 0310 | 617 781 000 | REMOVE AND SALVAGE MISC ELECTRICAL | LS | 1.00 |
| **0315** | **617 903 100** | **CONTROL UNIT** | **EACH** | **2.00** |
| 0320 | 617 903 459 | BLANKOUT SIGN | EACH | 1.00 |
| 0330 | 617 903 475 | VARIABLE MESSAGE SIGN COLOR-HALF | EACH | 5.00 |
| 0340 | 617 903 480 | VARIABLE MESSAGE SIGN COLOR-FULL | EACH | 12.00 |
| 0350 | 618 030 015 | TRAFFIC CONTROL-FIXED | UNIT | 500.00 |
| 0360 | 618 030 080 | TRAFFIC CONTROL-LS | LS | 1.00 |
| 0370 | 619 010 062 | SIGNS-ALUM SHEET INCR XI | SQFT | 1,199.70 |
| 0380 | 619 010 090 | SIGNS-ALUM REFL SHEET XI | SQFT | 321.40 |
| 0390 | 619 010 320 | POSTS-STEEL STRUCTURAL SIGN | LB | 11,121.00 |
| 0400 | 619 010 510 | OVERHEAD STRUCTURE/METAL | EACH | 7.00 |
| 0410 | 619 010 521 | OVERHEAD STR/METAL-CANTILEVER | EACH | 6.00 |
| 0420 | 619 010 726 | FRANG SIGN POST BKWY-W4 X 13 | EACH | 30.00 |
| 0430 | 619 010 730 | FRANG SIGN POST BKWY-W8 X 18 | EACH | 18.00 |

**TABLE OF CONTENTS**
**FEDERAL AID PROJECT(S) CRSII – IM 90-5(85)274**

1. PROJECT DESCRIPTION [102] ..... 6
2. CONTRACT TIME – FLEX TIME PROCEED DATE [108] (REVISED 1-21-16) ..... 6
3. CONTRACT DOCUMENTS [102] (REVISED 3-9-23) ..... 7
4. DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS [102] (REVISED 2-23-23) ..... 7
5. DBE QUOTES [102] (REVISED 3-10-16) ..... 7
6. DBE USAGE [102] (REVISED 2-23-23 M) ..... 7
7. LABOR REQUIREMENTS [102] (REVISED 9-5-19) ..... 8
8. CERTIFIED PAYROLL COMPLIANCE ELECTRONIC PAYROLL SUBMISSION [102] (REVISED 5-18-23) ..... 8
9. PARTNERING- LEVEL II FACILITATION [105] (ADDED 2-25-21) ..... 8
10. LARGE LEAD ITEMS ..... 8
11. STEEL PRICE ADJUSTMENT [106] (REVISED 4-28-22) ..... 8
12. BUILD AMERICA, BUY AMERICA (BABA) [106] (ADDED 12-08-22) ..... 9
13. DEPARTMENT CONSTRUCTION TRAINING [108] (ADDED 5-18-23) ..... 10
14. NOTICE TO BIDDERS [108] (ADDED 11-21-08) ..... 10
15. PARTIAL PAYMENTS [109] (ADDED 4-27-23) ..... 11
16. ENVIRONMENTAL SPECIFICATIONS [208] (ADDED 9-9-21M) ..... 11
17. STORM WATER PERMITTING REQUIREMENTS UNDER THE MT POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) [208] (REVISED 6-8-23) ..... 11
18. PROTECTION OF STORM WATER DRAINAGE SYSTEM AND COMPLIANCE WITH LOCAL PERMIT REQUIREMENTS [208] (REVISED 9-9-21M) ..... 13
19. PETROLEUM CONTAMINATED SOIL - HIGHWAY SPILLS ..... 13
20. PROTECTION OF AQUATIC RESOURCES [208] ..... 14
21. GREATER SAGE-GROUSE CONSERVATION ..... 16
22. HIGH EFFICACY LUMINAIRE LED ..... 16
23. SOL SIG-TRAF 1 COLOR-1 WAY 12 ..... 17
24. REMOVE AND SALVAGE MISC ELECTRICAL ..... 17
25. BLANKOUT SIGN ..... 18
26. VARIABLE MESSAGE SIGNS ..... 18
27. OVERHEAD STRUCTURE – METAL ..... 19
28. OVERHEAD STR/METAL – CANTILEVER ..... 20
29. ANCHOR BOLT TENSIONING FOR ANCILLARY STRUCTURES ..... 21
30. STRUCTURAL BOLTING OF ANCILLARY STRUCTURES ..... 23
31. SERVICE CONNECT ..... 23

SECTION II
Nondiscrimination Notice

SECTION III
Standard Provisions & Requirements

# SPECIAL PROVISIONS

## FEDERAL AID PROJECT NO(S). CRSII – IM 90-5(85)274

(REVISED 6-29-23)

The following special provisions are hereby made part of the contract and supplement and/or supersede any sections of the Standard Specifications of Road and Bridge Construction, adopted by the Montana Department of Transportation and the Montana Transportation Commission and all supplements thereto in conflict therewith.

The following documents are hereby incorporated by reference into this contract:

- "Question and Answer Forum": https://www.mdt.mt.gov/business/contracting/qacurrent.shtml
- "Standard Specifications for Road and Bridge construction": https://www.mdt.mt.gov/other/webdata/external/const/specifications/2020/SPEC-BOOK/2020-SPEC-BOOK-V4-0.pdf
- The most recent version of the Detailed Drawings: https://www.mdt.mt.gov/business/contracting/detailed_drawings.shtml
- The most recent version of the Materials Manual: https://www.mdt.mt.gov/other/webdata/external/materials/materials_manual/MDT-MATERIALS-MANUAL-062923-LETTING.pdf

The latest version of the Standard Specifications, Biannual updates, and revision summaries can be found at the following website: https://www.mdt.mt.gov/business/contracting/standard_specs.shtml

The Question-and-Answer Forum opens at 5:00 p.m. on the bid letting advertisement date and closes at 10:00 a.m. on the Monday before the bid letting. If Monday is a state holiday, the forum will close on Friday before the bid letting at 3:00 p.m. Answers provided by the Department to the questions, clarifications, and notifications can be posted up to 5:00 p.m. on the day before the letting.

The U.S. Department of Transportation (DOT) operates a toll-free number at 1-800-424-9071, 24 hours a day - 7 days a week. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use this number to report such activities. All information will be treated confidentially, and callers may remain anonymous.

The Department attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternate accessible formats of this document will be provided upon request. If reasonable accommodation is needed to participate in Department bid lettings, call the Civil Rights Bureau at 444-6331 or TTY 406-444-7696 [TTY 1-800-335-7592 (toll free)].

1. PROJECT DESCRIPTION [102]

Roadside safety enhancements include installations of advance warning signs with flashing beacons, road closure gates, electronic variable message signs (VMS), guardrail to shield the VMS structures, and upgrading wind speed gauge on the I-90 Incident Management project located in Broadwater, Gallatin, Park, Sweet Grass, Stillwater, and Yellowstone Counties.

This project begins just east of the Three Forks Interchange at RP 273.7 and extends 182.3 miles east past the Johnson Lane Interchange near Billings at RP 456.0.

2. CONTRACT TIME – FLEX TIME PROCEED DATE [108] (REVISED 1-21-16)

A. General. This provision modifies Subsection 108.02 of the Specifications.

B. Notice to Proceed. The notice to proceed will be issued with an effective date of November 16, 2023. The Contractor may change the notice to proceed date to an earlier date if written notification is received at least ten calendar days in advance of the date selected and the

selected date is approved by the Project Manager. Include an updated schedule with the notification.

C. Contract Time. Contract time assessment will begin on the notice to proceed date issued by the Department or as changed by the Contractor, whichever is earlier. Work is to be completed in 95 working days.

3. CONTRACT DOCUMENTS [102] (REVISED 3-9-23)

The following documents are now available within the Contractors Reference Material on the Department's Contracting and Bidding webpage https://www.mdt.mt.gov/business/contracting/ :

1) Table of Contractor's Submittals. (Revised 6-9-22)
2) Traffic Control Rate Schedule (Revised 3-9-23)
3) Erosion Control Rates

4. DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS [102] (REVISED 2-23-23)

The DBE goal for this contract is 0.0%. Use the AASHTOWare Project BidsTM Electronic Bid System (EBS) to print the DBE submittal and timing requirements. If the contract does not have a project-specific goal, the field will display in the AASHTOWare Project BidsTM bid file as a blank field.

List the DBE commitments in the EBS file. An on-line DBE Directory is available at: https://app.mdt.mt.gov/ess-dbe/.

If the DBE goal cannot be met, show a good faith effort per the Good Faith Effort Criteria and supporting forms, available at: http://www.mdt.mt.gov/publications/forms.shtml. Submit the Good Faith Effort documentation within 48 hours of the bid opening.

5. DBE QUOTES [102] (REVISED 3-10-16)

The Department has a quick and easy way for you to request quotes from Montana DBE-certified companies. The information goes to the DBE companies that same day. The on-line form is located at web site: https://app.mdt.mt.gov/dbeqt/.

Call the Department DBE Supportive Services, 1-800-883-5811, for further assistance. Using this online request form will be considered for good faith efforts, but it does not constitute meeting all requirements of good faith efforts.

6. DBE USAGE [102] (REVISED 2-23-23 M)

Contract specific goals are not placed on contracts; however, the Department has an overall 6.5% DBE goal it must achieve. To assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this contract, and has established an aspirational goal of 11.6% DBE usage. Although not a contract requirement, the Department believes that the aspirational goal can realistically be achieved through race neutral measures based on current availability of DBEs and standard competitive procurement processes. While the utilization is not mandatory to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Montana's DBE Program.

Any project listing a 0% DBE aspirational goal does not mean that a DBE may not be used on that project. A 0% DBE aspirational goal may have been established due to any of the following reasons:

- Limited identified subcontracting opportunities;
- Minimal contract days; and/or,
- Small contract dollar amount.

Contractors are encouraged to identify any opportunities to subcontract to DBEs.

The Department's DBE directory may be found at the following website: https://app.mdt.mt.gov/ess-dbe/.

7. LABOR REQUIREMENTS [102] (REVISED 9-5-19)

Pay the minimum wage rates contained elsewhere in the bid package. Comply with the required contract provisions contained in the form FHWA 1273 included with this contract. To obtain more information, contact the Department's Construction Engineering Services Bureau at 2701 Prospect, Helena, MT (406)475-2258, (800)335-7592 (TTY) or (406)444-7297 (Fax). The local employment service office, designated by the Workforce Service Division, Department of Labor & Industry, for this project is Helena, Bozeman, Livingston, and Billings.

Executive Orders 13658 and 13706 do not apply to this contract.

8. CERTIFIED PAYROLL COMPLIANCE ELECTRONIC PAYROLL SUBMISSION [102] (REVISED 5-18-23)

The Contractor and all subcontractors must use AASHTOWare Project Civil Rights & Labor™ (CRL) to submit Certified Payrolls (CPRs). Ensure that all subcontractors have submitted their Vendor Access Form which can be found on the following page: https://www.mdt.mt.gov/business/contracting/prevailing-wage.shtml to the Department and have received their login IDs prior to work.

Request the contract number and project ID(s) from the Project Manager. Provide the information to all subcontractors subject to the FHWA 1273 requirements. This information is also available using the Search Awarded Contracts located at: https://app.mdt.mt.gov/ess-awardedproj/.

Provide assistance and ensure all subcontractors submit CPRs electronically into CRL within the required timeframe.

9. PARTNERING- LEVEL II FACILITATION [105] (ADDED 2-25-21)

An internal partnering meeting will be facilitated between the Project Manager and the Contractor prior to the Notice to Proceed date.

Implement partnering in accordance with the Montana Partnering Field Guide found at the following link: https://www.mdt.mt.gov/publications/manuals.shtml#con

Make a good-faith effort to settle any unresolved discrepancies by utilizing the Partnering Escalation/Issue Resolution Ladder identified in the Partnering Field Guide prior to submitting a notice of claim.

10. LARGE LEAD ITEMS

A. Description. Some specialty items with this contract may be difficult to procure within the specified contract time.

B. Material. Vacant.

C. Construction Requirements.

a) MDT recognizes that there are items within this contract that require large lead times. Bid items with lead times affecting the contract completion time need to be brought to the attention of the Project Manager. Provide proof from the manufacturers along with estimated delivery and installation dates. These delays will be handled using MDT Standard Specification 108.07.5.

b) All bid items that can be completed within the original contract working days are expected to be completed as bid within the original contract time.

D. Method of Measurement. No additional payment will be made for large lead items, they are only eligible for contract time.

11. STEEL PRICE ADJUSTMENT [106] (REVISED 4-28-22)

A. General. The Contractor may elect to participate in a Steel Price Adjustment to payments for selected bid items made primarily of steel. Payment adjustments will only be made for fluctuations in the cost of the steel material. No adjustment will be made for changes in the

cost of manufacturing, fabrication, shipping, storage, for any products purchased from the mill prior to the letting date, or for steel that is not permanently incorporated into the work.

The price adjustment will be based on the base price per pound of steel and changes to the steel price index between the bid letting date and the steel purchase date. Payment adjustments may be positive or negative.

Steel Price Index: The Department will use the Bureau of Labor and Statistics Producer Price Index (BLS PPI) “Steel Mill Products” Series ID WPU1017 not seasonally adjusted. The index used will be the final version of the index, revised 4 months after the original publication, including any corrections to the index.

The base price per pound of steel for this contract is: $0.75.

B. Applicable Bid Items. Notify the Project Manager in writing by the Notice to Proceed date or at the pre-construction conference, whichever comes first, of any intent to participate in the steel price adjustment. Select the bid items for participation at the time of notification to the Project Manager. No changes will be allowed after submission.

Nuts, bolts, rebar chairs, connecting bands, and other miscellaneous hardware items will not be included in the price adjustment. High strength bridge bolt assemblies may be included in the price adjustment.

C. Steel Price Index. Furnish the following documentation for all steel bid items selected for steel price adjustment regardless of whether the index increased or decreased:

1) Paid invoice or other proof of purchase showing the date the steel was purchased and the weight of the steel.

2) An affidavit signed by the Contractor stating that the information provided is true and accurate.

3) Submit all documentation prior to incorporating the steel into the work. This provision in no way modifies or cancels the requirements of Subsection 106.09.

D. Steel Price Adjustment. The Project Manager will calculate the adjustments. Adjustments may be positive, negative, or non-existent depending on the difference between the Base Index (IB) and Current Index (IC). No price adjustment will be made unless the IC is 10% higher or lower than the IB.

For Increases:

Adjustment Factor (AF) = (IC/IB-1.10), rounded to the nearest 0.01
If AF is equal to or less than 0, no adjustment.
If AF is greater than 0, continue
Payment Adjustment = AF x weight x base price

For Decreases:

Adjustment Factor (AF) = (IC/IB-0.90), rounded to the nearest 0.01
If AF is equal to or greater than 0, no adjustment.
If AF is less than 0, continue
Payment Adjustment= AF x weight x base price

Where:
IB = BLS PPI for month contract was let
IC = BLS PPI for month material was purchased from the mill (invoice date)
Weight = weight of steel in pounds

12. BUILD AMERICA, BUY AMERICA (BABA) [106] (ADDED 12-08-22)

Furnish construction materials manufactured in the United States. Manufacturing processes for the construction material must occur in the United States. Manufacturing

processes are defined as the final manufacturing process and the process immediately preceding the final manufacturing process. Construction materials include articles, materials, or supplies that are or consist primarily of:

- Non-ferrous metals.
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).
- Glass.
- Lumber, and
- Drywall.

Construction materials exclude cement and cementitious materials, aggregates including stone, sand, or gravel, or aggregate binding agents (e.g., asphalt binder) or additives (e.g., polymer modifiers and admixtures).

Treat items that consist of two or more construction materials that have been combined through a manufacturing process, and items that include at least one construction material combined with a material that is not listed through a manufacturing process, as manufactured products. Manufactured products that do not contain steel or iron are exempt until further notice.

Buy America preference applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to a project. It does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the project (e.g., temporary aluminum scaffolding). Buy America preference does not apply to equipment and furnishings that are used at or within the finished infrastructure project but are not permanently affixed to the structure (e.g., movable chairs, desks, or computer equipment used at or within the project but are not integral or permanently affixed to a structure).

Submit Form MDT-MAT-407 “Manufacturer’s Certificate of Compliance” for every material identified as a construction material in the Department’s Materials Manual Section MT 601 furnished to the project. Do not incorporate construction materials into the project until all required documentation is submitted to the Department. Ensure that suppliers and manufacturers understand the BABA and contract requirements to supply the required documentation.

The Department will not accept items installed until all supporting documentation has been reviewed and is found to be in accordance with the contract requirements. Insufficient or unavailable documentation or documentation showing products to contain construction materials of foreign origin are grounds for removal and replacement at the contractor’s expense.

The Department has designated which materials are considered “construction materials” and will be required to meet the new BABA regulations by their respective 9-digit material codes in section MT 601 of the Montana Materials Manual. However, the Department recognizes there will be situations where a product or material may not fit the designation indicated in section MT 601. In these cases, submit documentation demonstrating or justifying the supplier or manufacturer’s position their specific item has been misclassified to the Project Manager at least 10 business days in advance of installation. The Department, in conjunction with FHWA, will review the submitted documentation and make a determination as to how that specific product or material will be classified. These determinations will be final and will require the appropriate necessary documentation as defined above.

13. DEPARTMENT CONSTRUCTION TRAINING [108] (ADDED 5-18-23)

Do not work during the Department’s Statewide Construction Training which will be held February 26 through March 1 of 2024. No time will be charged for Contracts with active construction during this period.

14. NOTICE TO BIDDERS [108] (ADDED 11-21-08)

This project is funded in whole or in part by funds received from the Federal Highway Administration (FHWA), and its construction is wholly contingent on the state's continued receipt

of those federal funds. If the federal funds are reduced or not received, the Department may choose to terminate the contract for convenience under the provisions of Subsection 108.10. Any bidder on this project, by submitting its bid, understands and accepts the possibility of the contract being terminated in the event federal funds are reduced or not available and by submitting a bid, each bidder waives any claims for costs or damages other than as specifically allowed by Subsection 108.10.2. In particular, bidders understand and accept that no payment will be allowed for any claimed anticipated profit for work not performed.

15. PARTIAL PAYMENTS [109] (ADDED 4-27-23)

Rescind the first paragraph of Subsection 109.06 and replace with the following:

"Partial payments will be made once each month based on estimates of the value of the work performed and materials complete in place under the contract, including materials delivered under Subsection 109.07. No payments will be made for work performed or materials produced without the required permits and authorizations in place as required under Subsection 107.02."

16. ENVIRONMENTAL SPECIFICATIONS [208] (ADDED 9-9-21M)

The Contractor is required to review and meet the specifications of the following subsections:

| | |
|---|---|
| 1. Migratory Bird Treaty Act Compliance – Vegetation Removal | Subsection 208.03.4A(1) |
| 2. Work in Bear Habitat | Subsection 208.03.4E |

17. STORM WATER PERMITTING REQUIREMENTS UNDER THE MT POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) [208] (REVISED 6-8-23)

A. Description. The DEQ regulates storm water discharges under the MPDES program. If the bid package contains blank erosion control plans, a construction storm water discharge permit authorization will be required. If not, a storm water discharge permit authorization may be required for this project depending on Contractor's operations. Sum the disturbance area (as defined by DEQ) identified in the contract with the area of disturbance caused by contractor operations to determine if the permit acreage threshold is exceeded. Contractor operations can include, but are not limited to, the following support activities: staging areas, access roads, material storage areas, temporary concrete, or asphalt batch plants, borrow areas, areas used for fill placement, etc. If the summed disturbance area is one acre or more, use the DEQ authorization to discharge under the MPDES General Permit for Storm Water Discharges Associated with Construction Activity (General Permit) for this project. In order to facilitate permit transfer, separate NOI packages are required for areas within the right-of-way and areas outside of the right-of-way. A NOI package includes a Notice of Intent, with a topographic map, a SWPPP, the erosion control plans, sage grouse consultation letter, if applicable, and supporting documentation.

Blank Erosion Control Plans, and a topographic map, are provided with the plans if the plans include greater than 1 acre of disturbance. Complete the erosion control plans as required by the general permit. Complete the SWPPP using DEQ's most current SWPPP Form.

B. Materials. Follow the requirements described in the Department's *Erosion and Sediment Control Best Management Practices Manual (December 2016).* Rescind Section 208 detailed drawings. Submit to the Project Manager for review and acceptance BMPs proposed for use that are not included in the Manual.

C. Construction Requirements.

1) MPDES Permit Required.

a) Submit one NOI package and the associated fees to DEQ for ground disturbance areas shown in the plans or within the right-of-way. For ground disturbance areas shown in the plans and any other areas within the right-of-way where Contractor activities causing ground disturbance are planned, the Contractor is the sole permittee until construction is complete and the General Permit is transferred to the Department or another entity.

The Department is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

Comply with the requirements of the General Permit and implement the SWPPP. Provide an electronic copy of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ to the Project Manager prior to conducting any ground disturbance activities.

Do not begin construction activities until the required copy of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ is received by the Project Manager.

b) Furnish and install public signage as required by the General Permit. Include the cost of the required sign(s) in the Temporary Erosion Control Lump Sum bid item. Submit a separate NOI package and the associated fees to DEQ for ground disturbance and support activity areas outside the right-of-way and not shown in the plans. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the right-of-way. For all support activities outside the right-of-way which are not part of a larger commercial operation serving multiple unrelated construction activities and will not continue operation beyond the completion of the contracted road construction activity, a notice of intent package must be submitted to DEQ to obtain an authorization under the General Permit. Sand and gravel borrow area operations, gravel pits, and/or concrete batch plants that will continue operation beyond the completion of the contracted road project, are part of a larger commercial operation, or serving multiple unrelated construction activities, must obtain permit coverage under the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP) regardless of acreage size of the activity if the activity does not already have MSGP authorization. The Contractor is the sole permittee until stabilization is complete and the General Permit is terminated or transferred to another entity. The Department is not responsible for delays caused by incomplete or inaccurate submittals to DEQ by the Contractor.

Provide copies of all NOI Packages submitted to DEQ and confirmations for receipt of complete NOI Packages from DEQ to the Project Manager prior to conducting any ground disturbance activities.

Be responsible for all temporary erosion, sediment, and pollution prevention controls for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans.

c) Complete and document all inspections in accordance with the requirements of the General Permit. Use DEQ’s most current self-inspection form available online at: http://deq.mt.gov/Water/WPB/mpdes/stormwaterconstruction. Provide a copy of all inspection reports to the Project Manager within 7 calendar days of the inspection.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within 7 calendar days of sending or receiving all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

The temporary erosion and sediment control measures and devices to prevent pollution and control sediment transport and soil erosion will be inspected as part of the final inspection to ensure they are maintained and functioning properly. Do not transfer or terminate the General Permit coverage until the BMPs are inspected and accepted and all records required under the permit, including inspection and monitoring reports, are furnished to the Project Manager and

authorization is received from the Department. The Department may require that certain BMPs be replaced by another type of BMP as a condition of permit transfer.
Upon approval of site conditions, measures, devices and all pertinent records, the Department will notify the Contractor to begin the Permit Transfer Notification in DEQ FACTS. Once completed, provide verification that all fees have been paid and the permit is ready for transfer in DEQ FACTS. The Department is not liable for the completeness or accuracy of Contractor records completed prior to the permit transfer. Ensure permit conditions and responsibilities are met until confirmation of the transfer is received from DEQ. Defend and hold the Department harmless from any violations, claims, enforcement actions, penalties or fines issued for Contractor activities or recordkeeping that occurred prior to the transfer of the General Permit.

If the Department concurs that final stabilization has been met during the final walk-through, the Contractor may submit a Notice of Termination form to DEQ. Pay the annual fee invoice due at the time of termination. Submit the annual fee invoice to the Project Manager for reimbursement.

2) MPDES Permit not Required.

The BMP-Administration item is included in contracts that may not meet either criteria for an MPDES permit but include ground disturbing activities. Complete BMP inspections and install BMPs, if necessary, in accordance with Section 208, if no storm water permit is required. Utilize form MDT-ENV-014, Water Pollution Control Inspection Report. A certified SWPPP Administrator is not required to conduct the inspections if no permit is required.

D. Method of Measurement. DEQ MPDES fees and monitoring costs associated with obtaining and maintaining the General Permit for ground disturbance areas both within and outside the right-of-way are not measured separately for payment.

If no permit is necessary, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item.

E. Basis of Payment. No additional payment will be made for the DEQ MPDES fees and monitoring costs associated with the General Permit. Include these costs in the Temporary Erosion Control-Lump Sum bid item.

For project including the BMP-Administration item, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item. Partial payment for the BMP-Administration will be monthly based on the lump sum contract price in accordance with Table 208-2 in Subsection 208.05.1.

Payment for BMPs required by an event or extra work, and approved by the Project Manager, will be measured and paid for in accordance with the Erosion Control Rate Schedule contained in the contract at a unit price of $1.00 per unit.

18. PROTECTION OF STORM WATER DRAINAGE SYSTEM AND COMPLIANCE WITH LOCAL PERMIT REQUIREMENTS [208] (REVISED 9-9-21M)

This project is located within an area designated by the Montana Department of Environmental Quality (DEQ) as a regulated MS4. Contact the City of Billings Public Works - Environmental Affairs, PO Box 30958, 2224 Montana Ave, Billings MT 59111, phone 406-247-8517 and Yellowstone County Public Works, PO Box 35024, 217 N. 27th St Rm 312, Billings MT 59107, phone 406-254-7926, Butte – Silver Bow Public Works, 124 West Granite St., Butte, MT 59701, phone 406-497-6563, and City of Bozeman Public Works, PO Box 1230, 20 E Olive, Bozeman, MT, 59771, phone 406-582-2270 to determine if additional requirements are in place for construction storm water discharges that would affect this project.

Review Subsection 208.03.1(C) for more information.

19. PETROLEUM CONTAMINATED SOIL - HIGHWAY SPILLS

A. Description. Petroleum-contaminated soils may exist in areas where highway spills have occurred within the project corridors, including but not limited to spills documented with Montana Department of Environmental Quality. These documented highway spills include

those on Interstate 90 at RPs 312, 313, 318, 319.6, 325, between 330 and 331, 333, 334, 367, 369, 370, 400, 407, 407.5, 408, 410, 426, 428, 435, 454, 454.3, 455 and 456. Petroleum contaminated soils may exist at the surface and into underlying shallow soils. Petroleum contaminated soil is recognized by a strong petroleum odor and dark staining of soil.

B. Materials. Reserved

C. Construction Requirements. Notify Project Manager and MDT Environmental Services if petroleum contaminated soil is encountered. Upon approval from the Department, remove visibly stained and odorous material and dispose of at a license landfill accepting such waste. Keep out of water.

D. Measurement and Payment. Transport and disposal of the contaminated soil is measured by the unit of contaminated soil for the work performed as directed in writing by the Engineer. Such payment will be in full compensation for all resources necessary to complete this item of work. Excavation, transportation, and disposal of contaminated soil will be paid for on an unit price basis.

20. PROTECTION OF AQUATIC RESOURCES [208]

A. Description. Aquatic resources are protected under federal, state, and tribal laws and regulations including but not limited to the Clean Water Act and the Stream Protection Act. The following approximate location(s) have been identified as apparent aquatic resources in the project limits:

1) RP 273.77 – Unnamed drainage crossing
2) RP 274.17 – Unnamed drainage crossing
3) RP 275.22 to RP 275.35 – Unnamed drainage crossings
4) RP 275.80 – Unnamed drainage crossing
5) RP 297.83 – Story Creek crossing, wetlands
6) RP 298.26 – Mammoth Ditch crossing, wetlands
7) RP 299.02 – Unnamed drainage crossing
8) RP 299.16 to RP 299.20 – Irrigation ditch crossing
9) RP 299.41 – Spain Ferris Ditch crossing, wetlands
10) RP 301.64 – Baxter Creek crossing, wetlands
11) RP 301.64 to RP 302.53 SW side – Baxter Creek, unnamed drainage, wetlands
12) RP 301.95 – Baxter Creek crossing, wetlands
13) RP 312.18 to RP 312.27 – Unnamed drainage, irrigation crossings, wetlands
14) RP 312.60 – Unnamed drainage crossing, wetlands
15) RP 312.70 to RP 312.77 – Unnamed drainage crossing, wetlands
16) RP 312.85 – Bear Creek crossing, wetlands
17) RP 313.49 to RP 313.66 NE side of off ramp – Wetlands
18) RP 318.60 to RP318.75 – Wetlands
19) RP 318.70 – Unnamed drainage crossing, wetlands
20) RP 319.10 – Unnamed drainage crossing, wetlands
21) RP 319.36 to RP 319.51 NW side – Wetlands
22) RP 319.44 – Timberline Creek crossing, wetlands
23) RP 324.00 – Unnamed drainage crossing, wetlands
24) RP 324.28 – Unnamed drainage crossing, wetlands
25) RP 324.48 (N side) to RP 324.60 (S side inside ramp) – Flynn Creek crossing, wetlands
26) RP 330.09 – Unnamed drainage crossing, wetlands
27) RP 330.28 to RP 330.33 – Irrigation crossings, wetlands
28) RP 330.43 to RP 330.62 N side – Irrigation ditch, wetlands
29) RP 333.94 to RP 334.02 NW side – Seep, wetlands
30) RP 334.15 to RP 334.18 – Unnamed drainage crossing, wetlands
31) RP 338.69 – Unnamed drainage crossing

32) (Hwy 10) RP 0.42 – Irrigation crossing, wetlands
33) (Hwy 10) RP 0.75 – Fleshman Creek crossing, wetlands
34) (Hwy 10) RP 1.00 to RP 1.11 N side – Unnamed drainage, wetlands
35) (Hwy 10) RP 1.11 – Unnamed drainage crossing, wetlands
36) (Hwy 10) RP 1.11 to RP 1.38 S side – Unnamed drainage crossing, wetlands
37) (Hwy 10) RP 1.68 to RP 1.85 – Unnamed drainage, wetlands
38) (Hwy 10) RP 1.84 - Unnamed drainage crossing, wetlands
39) RP 367.6 to RP 368.4 – Unnamed drainage
40) RP 368.87 - Pig Creek
41) RP 368.91 to RP 369.0 – Boulder River
42) RP 368.83 to RP 369.2 N side – Wetland
43) RP 369.53 to RP 369.90 N side – Wetland
44) RP 368.9 to RP 369.45 N side – Wetland
45) RP 365.97 to RP 366.0 N side – Wetland
46) RP 366.16 to RP 367.18 N side – Wetland
47) RP 368.83 to RP 369.2 N side – Wetland
48) RP 369.53 to RP 369.9 N side – Wetland
49) RP 368.81 to RP 369.0 S side – Wetland
50) RP 369.02 to RP 369.32 S side – Wetland
51) RP 369.53 to RP 370.0 S side – Wetland
52) RP 370.00 to RP 370.3 S side – Wetland
53) RP 399.73 – Coulee Creek
54) RP 400.90 – Berry Creek
55) RP 407.77 – Keyser Creek
56) RP 426.97 to RP 427.21 N side – Wetland
57) RP 454.72 – Dry Creek

Additional aquatic resources may be present within the project limits. Coordinate with the Project Manager to identify these areas in the field.

B. Construction. Materials are prohibited from placement in aquatic resources. Impacts to aquatic resources resulting from project activities have not been permitted or authorized. Impacts to these areas and associated consequences are the responsibility of the Contractor.

1) Conduct work in a manner that avoids impacts to aquatic resources in accordance with Subsection 208.03.2. Prevent all material from entering aquatic resources.

2) Submit a plan to the Project Manager and DEES detailing the BMPs or alternate methods proposed for each location a minimum of 10 business days prior to start of work. Modification(s) to the Contractor’s aquatic resource protection plan or BMPs requires approval from the Project Manager.

3) Implement BMPs to prevent placement of materials in aquatic resources. BMPs may include:

a) A stable physical barrier that prevents 100% of material from entering aquatic resource areas.

b) Modified sweeping and brooming methods.

c) Pickup and dispose of millings and/or chips. Millings must be treated as a solid waste.

4) Remove and dispose of any physical BMPs upon completion of the project work.

C. Measurement. Work and materials to protect aquatic resources is measured by the lump sum.

D. Basis of Payment. Include the costs to perform, install, maintain, and remove BMPs associated with work described in this special provision in the contract unit price for PAR BMP ADMINISTRATION – Lump Sum.

21. GREATER SAGE-GROUSE CONSERVATION

A. Description. Greater Sage-Grouse is a Species of Concern under state management actions: Executive Order (E.O.) No.12-2015 and Montana Greater Sage-Grouse Stewardship Act. These management actions established procedures and stipulations for activities in designated general and core Greater Sage-Grouse habitat and connectivity areas.

This project occurs in designated general habitat for the Greater Sage-Grouse. Specifically, the proposed activities located at Springtime Road (RP 400) are in designated habitat. The project limits are not within 2.0-miles of an active lek.

B. Requirements.

1) Weed management is required within designated habitat for greater sage-grouse. Reclamation of disturbed areas must include control of noxious weeds and invasive plant species, including cheatgrass (Bromus tectorum) and Japanese brome (Bromus japonicus).

2) Coordinate with the Montana Sage Grouse Habitat Conservation Program (MSGHCP) (https://sagegrouse.mt.gov/ ) on all contractor activities in designated Sage-Grouse habitats which require the contractor to obtain any state permit or authorization prior to starting those activities. This applies to activities both in and outside the existing right of way limits in designated habitat. MDT has not consulted with the MSGHCP on this project.

3) Seed any disturbed areas with desirable plant species as soon as practicable after construction to reduce the spread and establishment of noxious weeds and to re-establish permanent vegetation.

C. Measurement and Basis for Payment. Work described in this provision is not measured for payment. Consider all costs, including any mitigation required by the MSGHCP, associated with this provision incidental to performance of the work. Include the cost in the cost of other items.

22. HIGH EFFICACY LUMINAIRE LED

A. Description. Install luminaires that use light-emitting diodes (LED) as a light source.

B. Materials. Provide luminaires with a die cast aluminum housing and a universal four-bolt slip fitter mount. Provide luminaires utilizing arrayed discreet LEDs - COB (chip-on-board) LEDs will not be accepted. Provide luminaires with a light distribution of type 2. Provide luminaires rated at 17,600 delivered lumens. Provide luminaires having a field adjustable drive current selector with a range of 350 milliamps to 700 milliamps. Specify a drive current setting of 450 mA. Submit Backlight, Uplight, and Glare (BUG) ratings. Provide luminaires that have an uplight rating of U1 or less. Provide luminaires that meet ANSI C136.37 standards for solid state light sources. Provide luminaires with an LED optical assembly that has an ingress protection rating of IP66. Provide luminaires that are photometrically tested by certified independent testing laboratories in accordance with IES LM-79 testing procedures. Use a correlated color temperature (CCT) of 4000 K and a minimum color rendering index (CRI) of 70. Use LEDs that are mercury and lead free. Use LEDs that are tested in accordance with IES LM-80 testing procedures. Use LEDs rated to produce a minimum of 90% intensity at 100,000 hours of life based on IES TM-21 (L90). Submit a TM-21 report for the LEDs. Provide a power supply with a minimum power factor of .90 and a maximum total harmonic distortion (THD) of 20% or less. Provide surge protection with a minimum of ANSI/IEEE C62.41 category C protection. Wire luminaires for 240-volt operation. Provide access to electrical components without the use of tools. Provide luminaires that are UL listed for use in wet locations. Provide a minimum 10-year manufacturers' warranty for the entire luminaire assembly including material, workmanship, photometrics, power supply and LED modules. If more than 10% of the individual LED's fail within the warranty period, the luminaire must be repaired or replaced.

C. Construction Requirements. Adjust luminaires at night to provide the best roadway lighting distribution. Adjust luminaires so they are level from side to side to limit glare.

D. Method of Measurement and Basis of Payment. The bid item HIGH EFFICACY LUMINAIRE LED includes payment for each LED Luminaire in place and operational, which includes furnishing and installing the LED Luminaire, mounting hardware, and making all necessary electrical connections. Provide any additional equipment required as part of this bid item.

23. SOL SIG-TRAF 1 COLOR-1 WAY 12

A. Description. Provide solar power warning beacons and solar system for Advance Warning Signs. See detail in Electrical plans.

B. Materials. Provide a system that includes a solar powered 12-inch (300 mm) yellow traffic signal, solar panels, solar charge controller, batteries, cabinet, steel conduit, conduit bodies, and mounting hardware. Provide an accessible manual/on/off switch to the flashing beacons for manual control. Provide a traffic signal that meets section 703.08 of the standard specifications except furnish a cap style visor instead of a tunnel visor and do not furnish / install backplates.

Radio equipment will be state furnished and installed. Have the project manager notify Phill Balsley of MDT (406-444-6305) when the cabinet is in place and ready for installation of radio equipment.

Furnish a NEMA type 3R metal cabinet large enough to house all equipment specified but no less than 17” wide x 27” high x 16” deep. Provide a cabinet with hinged lockable door - provide a Best lock (green) with two keys. Include the cost of circuit breakers, relays, terminal blocks, wiring, and any miscellaneous equipment as part of this bid item. Mount breakers, relay, and terminal block to one side of the cabinet leaving room for state furnished/installed radio equipment.

Provide a MPPT (Maximum Power Point Tracking) charge controller for battery charge control.

C. Method of Measurement and Basis of Payment. The bid item SOL SIG-TRAF 1 COLOR-1 WAY 12 is for each traffic signal (advance warning beacon) in place and operational, including all solar components necessary to make a complete system. The Type 1-200 Signal Standard and the foundation are covered under separate bid items.

24. REMOVE AND SALVAGE MISC ELECTRICAL

A. Description. Remove and Salvage road closure gates and service assemblies as indicated in the plans.

B. Construction Requirements. Take care not to damage equipment. Securely attach all miscellaneous parts associated with salvaged equipment (e.g., nuts, bolts, washers, caps, hand-hole covers) to the equipment to prevent loss or damage. Dispose of removed wiring and remove foundations.

Remove and dispose of flasher, exposed conduit, conductors, electrical cabinet, and radio associated with the flashing radio information sign located at R.P. 337.0 (westbound). Give two working days notice to the Maintenance Superintendent before delivery of salvaged equipment. Deliver removed equipment to the following locations:

- Road closure gates with luminaire assemblies (10 total) from sites 8, 9, 11: Livingston MDT Maintenance, 26 West End Road, Livingston, MT. Contact Larry Chapel at 406-222-2611.
- Service assemblies (2 total) from sites 13, 15: Big Timber MDT Maintenance, 701 East 1st Avenue, Big Timber, MT. Contact Steve Reed at 406-446-2811.
- Service assemblies (2 total) from site 18: Columbus MDT Maintenance, 10 Lehman Rd, Columbus, MT. Contact Chris Rasmussen at 406-322-4491.
- Service assemblies (2 total) from sites 19, 22: Billings MDT Maintenance, 424 Morey Street, Billings, MT. Contact Mark Martin at 406-657-0248.

C. Method of Measurement and Basis of Payment. The lump sum bid item REMOVE AND SALVAGE MISC ELECTRICAL includes payment for all necessary removing, salvaging, disposal, and delivery to MDT.

25. BLANKOUT SIGN

A. Description. Provide a light-emitting diode (LED) blankout sign at the Livingston East interchange.

B. Materials. Provide a sign that displays single stroke letters that are clearly legible. The sign enclosure is sealed to withstand all types of weather conditions and is constructed of seamless extruded aluminum with an impact resistant polycarbonate face. Maintenance access is through the face of the sign. The message displayed when the sign is energized consists of two lines of text, each line consisting of ten characters with 10” character height. The message is white in color on a black background and is discernable in direct sunlight. The sign operates on 120 Volts AC with a maximum current draw of 5 amps. Provide a sign intended for outdoor use and is UL approved for wet locations. Provide a sign with electronics and LEDs that operate properly in a temperature range of −40 °C to +70 °C and during all levels of sunlight exposure. Provide a sign with LEDs that have an expected life of 100,000 hours while maintaining a minimum of 70% of the original brightness.

When not energized, the sign blanks out (unreadable) with no phantom images under any ambient light condition.

C. Construction Requirements. Furnish mounting hardware to mount the LED blankout sign with structural adequacy in a horizontal level orientation on the cantilever structure as shown in the plans. Run required electrical conductors internally to the pole and sign. Submit complete shop drawings of the sign mountings for department approval.

D. Method of Measurement and Basis of Payment. The bid item BLANKOUT SIGN pays for each LED blankout sign in place and operational including mounting hardware and all necessary electrical connections. Provide any additional equipment required as part of this bid item. The structure and foundation are covered under separate bid items.

26. VARIABLE MESSAGE SIGNS

A. Description. Furnish and install Walk-In Variable Message Signs and Auxiliary Control Panels.

B. Construction Requirements. For the bid item VARIABLE MESSAGE SIGN COLOR-HALF, furnish a Daktronics Walk-In Dynamic Message Sign model VF-2020-96x240-20-RGB. For the bid item VARIABLE MESSAGE SIGN COLOR-FULL, furnish a Daktronics Walk-In Dynamic Message Sign model VF-2020-96x352-20-RGB. For each bid item, furnish a Daktronics 336S, 3’10” x 2’0” x 1’8” NEMA 3R equipment cabinet.

C. Transport the sign and cabinet to the construction site and install on the structure as part of this bid item. Have the project manager inform the MDT Communications Bureau Chief (Phill Balsley: 406-444-6305) of the desired sign commissioning date at least two weeks prior to that date. Provide personnel, materials, and equipment at the time of sign commissioning to correct any noted deficiency in sign installation. Arrange for a factory representative of the sign manufacturer to be present at the commissioning for technical assistance in setting up, checking out, and demonstrating that the system meets functional and operational requirements. The date arranged for the sign commissioning will be a mutually agreed upon date determined by the contractor, project manager, Communications Bureau Chief, and the sign manufacturer’s representative.

D. Method of Measurement and Basis of Payment. The bid items VARIABLE MESSAGE SIGN COLOR-HALF and VARIABLE MESSAGE SIGN COLOR-FULL include payment for each Variable Message Sign in place and operational, including all work and components required for a functioning system.

27. OVERHEAD STRUCTURE – METAL

A. Description. Furnish and install the sign structures at the locations shown on the plans including the structure, concrete foundation, reinforcing, anchor bolts, sign mounting hardware, connections and all necessary items and work required to fabricate and erect the structure to the Engineer's satisfaction. This item applies the standard type Variable Message Sign (VMS) structures installed "off the road".

B. Construction Requirements. Approximate sizes of the VMS are shown in the plans.

Design, fabricate and inspect structure in accordance with the 2015 AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, latest interims.

Design Parameters:

Design Wind: 700 MRI Basic Wind Speed (115 MPH Wind Speed)

Gust Factor Effect: G = 1.14

Height and Exposure Factor: Kz

Where α = 9.5 and zg = 900 ft. for Exposure C

Deflection:

Cantilevered Sign Supports: Free end of arm maximum deflection = 8"

Horizontal Supports for Sign Bridge Structures: Maximum deflection = 8"

Design Area: Design area with respect to maximum wind load is perpendicular to the structure.

Design Weight: Dead Load and Ice

Fatigue Category: 1 - Include Natural Wind Gusts.

Submit five copies of shop drawings on 11" x 17" or larger sheets and five copies of welding procedures and design calculations on 8½" x 11" or larger sheets to the Project Manager for approval at least 30 calendar days before start of fabrication. Shop drawings may be furnished in Adobe Acrobat Reader (.pdf) format in lieu of the hard copies. Assure the submittal includes all information required to check the structural accuracy and fabrication procedures for the structure. Show structural and fabrication information required for all components of the structure in the shop drawings including: the foundation with reinforcing; anchor bolt spacing, size, and length; size, length, weight and/or gauge of structural members; size, location and bolt spacing of connections; size and lengths of bolts; and ASTM and/or AASHTO rating of all structural components; and all welding procedures for any welded joint.

Submit five copies or .pdf document of foundation details to the Project Manager at least thirty calendar days before the start of structure fabrication. Show structural and fabrication information required for all components of the foundation design including: the foundation dimensions; placement of all reinforcing; anchor bolt spacing, size, and length; material specifications; and any installation notes. Show calculations for foundation design including, but not limited to, axial resistance, torsional resistance, and lateral resistance. If used, concrete forms should not extend to the full depth of the drilled shaft but may be used to a maximum depth of 1'-0" below final grade, to preclude concrete loss.

Complete a geotechnical investigation at each foundation location. Complete the borings and laboratory testing in general accordance with the MDT Geotechnical Manual. Submit the results of the geotechnical investigation and a summary of the foundation design calculations that include input parameters and subsequent results (e.g. capacities, displacements, factors of safety) for review. Provide a boring log of each location showing the soil conditions as part of the foundation design for review by the department.

Submit electrical, structural shop drawings, weld procedures, and foundation details for each location at one time in a complete package for the Department's initial and subsequent reviews. Structural shop drawings and foundation details must be designed and stamped by a professional engineer registered and licensed to conduct engineering in the State of Montana.

Only those packages received in one mailing will be accepted for review. The Department assumes no responsibility for incorrect dimensions or quantities.

Use appropriate sign mounting hardware to mount the sign on the sign structure. Assure a structural design provided as part of the plans has mounting as shown therein or an equal approved by the Department of Transportation. Submit sign mounting details for the Departments approval for overhead sign structures designed by the contractor to meet the requirements set forth in the plans, specifications, and special provisions.

Submit sign mounting designs capable of attaching the sign to the sign structure with structural adequacy in a vertical position at the signs designated location. Assure the structural components and design of the sign-mounting meet or exceed all requirements set forth in the 2015 AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, latest interims. Assure sign mounting does not exert irregular stress on the sign.

Submit appropriate and complete shop drawings of other structural components on the project in conformance with the Specifications for Road and Bridge Construction, the special provisions, and standard practice required by the Department prior to the construction or for acceptance of sign mounting hardware.

Include the 1 ½" conduit, fittings, and mounting hardware between the sign and the structure as part of this bid item.

C. Method of Measurement and Basis of Payment. The bid item OVERHEAD STRUCTURE-METAL includes payment for all sign mounting hardware, transportation of structure/hardware, and any peripheral equipment required to make this a complete and functional installation. Cost of transportation and installation of the VMS is covered separately by the bid item VARIABLE MESSAGE SIGN COLOR-FULL.

28. OVERHEAD STR/METAL – CANTILEVER

A. Description. Furnish and install the overhead cantilever sign structures for the Variable Message Signs (VMS) installed "over the road" and the blankout sign at exit 337 – Livingston East Interchange as shown on the plans including the structure, cross arm, concrete foundation, reinforcing, anchor bolts, connections, sign mounting brackets and all necessary items and work required to fabricate and erect the structures to the Engineer's satisfaction.

B. Construction Requirements. Design, fabricate and inspect structure in accordance with the 2015 AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, latest interims.

Design Parameters:

Design Wind: 700 MRI Basic Wind Speed (115 MPH Wind Speed)

Gust Factor Effect: G = 1.14

Height and Exposure Factor: Kz

- Where $\alpha = 9.5$ and $z_g = 900$ ft. for Exposure C

Deflection:

Cantilevered Sign Supports: Free end of arm maximum deflection = 8"

Horizontal Supports for Sign Bridge Structures: Maximum deflection = 8"

Design Area: Design area with respect to maximum wind load is perpendicular to the structure.

Design Weight: Dead Load and Ice

Fatigue Category: 1 - Include Natural Wind Gusts

Include Galloping, Truck Induced Gusts (Use posted speed limit) and Natural Wind Gusts.

Submit five copies of shop drawings on 11" x 17" or larger sheets and five copies of welding procedures and design calculations to the Project Manager at least thirty calendar days before the start of fabrication. Shop drawings may be furnished in Adobe Acrobat Reader (.pdf) format in lieu of the hard copies. Assure the submittal includes all information required to check the structural accuracy and fabrication procedures for the structure. Show structural and

fabrication information required for all components of the structure in the shop drawings including: the foundation with reinforcing; anchor bolt spacing, size, and length; size, length, weight and/or gauge of structural members; size, location and bolt spacing of connections; size and lengths of bolts; ASTM and/or AASHTO rating of all structural components; and all welding procedures for any welded joint.

If used, concrete forms should not extend to the full depth of the drilled shaft but may be used to a maximum depth of 1'-0" below final grade, to preclude concrete loss.

Complete a geotechnical investigation at each foundation location. Complete the borings and laboratory testing in general accordance with the MDT Geotechnical Manual. Submit the results of the geotechnical investigation and a summary of the foundation design calculations that include input parameters and subsequent results (e.g. capacities, displacements, factors of safety) for review. Provide a boring log of each location showing the soil conditions as part of the foundation design for review by the department.

Submit five copies or .pdf document of foundation details to the Project Manager at least thirty calendar days before the start of structure fabrication. Show structural and fabrication information required for all components of the foundation detail including: the foundation dimensions; placement of all reinforcing; anchor bolt spacing, size, and length; material specifications; and any installation notes.

Submit electrical, structural shop drawings, weld procedures, and foundation details at one time in a complete package for the Department's initial and subsequent reviews. Structural shop drawings and foundation details must be designed and stamped by a professional engineer registered and licensed to conduct engineering in the State of Montana. Only those packages received in one mailing will be accepted for review. The Department assumes no responsibility for incorrect dimensions or quantities.

C. Method of Measurement and Basis of Payment. The bid item OVERHEAD STR/METAL-CANTILEVER includes payment for all sign mounting hardware, transportation of structure/hardware, and any peripheral equipment required to make this a complete and functional installation. Cost and installation of the blankout sign is covered separately by the BLANKOUT SIGN bid item. Cost of transportation and installation of the VMS is covered separately by the VARIABLE MESSAGE SIGN COLOR-HALF bid item.

29. ANCHOR BOLT TENSIONING FOR ANCILLARY STRUCTURES

A. Description. Anchor bolt/nut installation requirements for all traffic structures designed in accordance with "LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals". Not applicable to breakaway connections.

B. Definitions:

1) Double nut connections: Base plate connections having a leveling nut/washer below the plate and a washer/nut above the plate.

2) Star tightening pattern: A pattern where the nuts on opposite or near opposite sides of the anchor bolt circle are successively tightened in a pattern resembling a star.

3) Wrench tightened anchor nut: The maximum nut rotation resulting from the effort of one person using a 12-inch-long wrench. (Applicable to anchor nuts only).

C. Construction Requirements. Install anchor bolts in anchor base connections in accordance with Section 15 of the current edition of the LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals and as specified in this special provision.

1) Pretension double nut connections to the following procedure.

a) Clean and lubricate the exposed threads of anchor bolts and nuts with beeswax.

b) Align leveling nuts to same elevation and place hardened structural washers atop. Ensure the distance between the bottom of the leveling nut and the top of the foundation is not more than the rod diameter.

c) Set base plate, structural washers and install top nuts.

d) Wrench tighten the top nuts in a star pattern.

e) Wrench tighten the leveling nuts in a star pattern.

f) Tighten top nuts to snugging torque in a star pattern.

g) Mark the reference position of each top nut with a suitable marking on one flat, with a corresponding reference mark on the base plate at each bolt.

h) Incrementally turn the top nuts using a star pattern until achieving the required nut rotating specified in the table below. Turn the nuts in at least two full tightening cycles.

| Anchor Rod Diameter (inch) | Nut Rotation[1, 2] | |
|---|---|---|
| | ASTM F1554 Grade 36 | ASTMs F1554 Grade 55 and 105 |
| ≤ 1 1/2 | 1/6 turn | 1/3 turn |
| >1 1/2 | 1/12 turn | 1/6 turn |

(1) Nut rotation is relative to anchor bolt. The tolerance is plus 20 degrees

(2) 2 Use a beveled washer if the nut is not in firm contact with the base plate or if the outer face of the base plate is sloped more than 1:40.

i) Check the installation by applying the verification torque to the top nut. Notify the project manager if the verification torque cannot be achieved.

(1) 2. For galvanized anchor rods, apply 110% of the verification torque after 48 hours but not more than 96 hours after the initial pre-tensioning.

| | ASTM F1554 Grade 36 | | ASTM F1554 Grade 55 | | ASTM F1554 Grade 105 | |
|---|---|---|---|---|---|---|
| Diameter (inch) | Snugging Torque (ft-lbf) | Verification Torque (ft-lbf) | Snugging Torque (ft-lbf) | Verification Torque (ft-lbf) | Snugging Torque (ft-lbf) | Verification Torque (ft-lbf) |
| 1 | 50 | 180 | 70 | 280 | 120 | 460 |
| 1 1/8 | 70 | 250 | 100 | 390 | 170 | 650 |
| 1 ¼ | 90 | 360 | 140 | 550 | 230 | 910 |
| 1 3/8 | 120 | 470 | 180 | 720 | 300 | 1,200 |
| 1 ½ | 160 | 620 | 240 | 950 | 400 | 1,590 |
| 1 ¾ | 250 | 970 | 380 | 1,500 | 630 | 2,500 |
| 2 | 370 | 1,450 | 570 | 2,250 | 940 | 3,750 |
| 2 ¼ | 530 | 2,120 | 830 | 3,290 | 1,380 | 5,490 |
| 2 ½ | 730 | 2,900 | 1,130 | 4,500 | 1,880 | 7,500 |
| 2 ¾ | 990 | 3,940 | 1,530 | 6,110 | 2,550 | 10,180 |
| 3 | 1,300 | 5,200 | 2,020 | 8,060 | 3,360 | 13,430 |
| 3 ¼ | 1,680 | 6,700 | 2,600 | 10,390 | 4,330 | 17,310 |
| 3 ½ | 2,120 | 8,460 | 3,280 | 13,120 | 5,470 | 21,870 |
| 3 ¾ | 2,630 | 10,510 | 4,080 | 16,300 | 6,790 | 27,160 |
| 4 | 3,220 | 12,860 | 4,990 | 19,950 | 8,320 | 33,250 |

D. Method of Measurement and Basis of Payment. Work associated with this special provision is not measured for payment. Include the cost in the bid item associated with the structure.

30. STRUCTURAL BOLTING OF ANCILLARY STRUCTURES

The following applies to structural supports for highway signs, luminaires, and traffic signals having high strength bolted connections consisting of solid steel plies: Install and pretension high strength bolts in accordance with Section 556, except that pre-installation verification is not required for turn of the nut, Direct Tension Indicator (DTI), or Tension Control Bolts (twist-off).

31. SERVICE CONNECT

Service connections are required for this project. Please see Plan Sheets for the locations. Notify the Project Manager a minimum of 30 calendar days prior to the installation of the service assembly so that the utility application can be started.
Utility company contact information:

| Site # | Utility Company | Contact |
|---|---|---|
| 1-4, 7-15 | Northwestern Energy - Butte | Cody Lux |
| 5-6 | Park Electric Cooperative | Tom Kersbergen / 406-222-7778 |
| 16-17 | Beartooth Electric Co-op | Marty Tomlin / 406-446-2310 |
| 18-23 | Northwestern Energy – Billings | Taylor Erskine |

Northwestern Energy New Construction Website:
https://www.northwesternenergy.com/account-services/for-business/construction-services

Refer to construction memo ENG 20-01 for additional information on the Service Application Process: https://www.mdt.mt.gov/business/contracting/memos/const_memos.shtml

END OF SECTION I

**MDT NONDISCRIMINATION AND**
**DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

| Federal protected classes | State protected classes |
|---|---|
| Race, color, national origin, sex, sexual orientation, gender identity, age, disability, income-level & Limited English Proficiency | Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status, vaccination status or possession of immunity passport |

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
    ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
    iii. Contact information for the PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
    iv. Information on how to request information in alternative accessible formats.

c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml

b. By signing this agreement, the PARTY assures MDT that:

*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 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 recipient deems appropriate.*

c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non- discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or

b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;

- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;

- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

# STANDARD PROVISIONS INDEX

**FEDERAL AID PROJECTS** **CONTAINS**

Federal Wage Rates (Rev. 4-28-2023)..... 6 Pages

Requirements & Acknowledgement for Working on Railroad R/W ..... 1 Page

Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Rev.7-5-2022]..... 13 Pages

Supplemental Revisions for Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Added 2-4-2016] ..... 1 Page

EEO Affirmative Action Req. on Federal-Aid Construction ..... 1 Page

General Decision Number: MT20230079 04/28/2023

State: Montana

Construction Type: Highway

Counties: Montana Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

| | |
|---|---|
| If the contract is entered into on or after January 30,2022, or the contract is renewed or extended (e.g., an option is exercised) on or option is exercised) on or after January 30, 2022. | Executive Order 14026 generally applies to the contract.<br>The contractor must pay all covered workers at least $16.20 per hour (or the applicable wage determination, if it is higher) for all hours spent performing on the contract in 2023. |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022. | Executive Order 13658 generally applies to the contract.<br>The contractor must pay all covered workers at least $12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2023. |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts .

| Modification Number | Publication Date |
|---|---|
| 0 | 04/28/2023 |

SUMT2023-001 04/01/2022

| | Rates | Fringes |
|---|---|---|
| **CARPENTER** | | |
| Carpenter/Piledriverman | $ 36.05 | 14.23 |
| Millwright | $ 40.87 | 14.70 |
| **CEMENT MASON/CONCRETE FINISHER** | $ 33.41 | 16.51 |

**DIVER**

| | | |
|---|---|---|
| Diver Tender | $ 45.30 | 18.38 |
| Diving | $ 92.66 | 18.38 |
| Stand-By | $ 46.33 | 18.38 |

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing when work is done under hyperbaric conditions.

Depth Pay (Surface Diving):
0-20 ft.: Free zone
>20-100 ft.: $2.00 per ft.
>100-150 ft.: $3.00 per ft.
>150-220 ft.: $4 00 per ft.
>220 ft.: $5.00 per ft.

Diving in Enclosures (Diver Only):
0-25 ft.: Free zone
>25-300 ft.: $1.00 per ft.

**ELECTRICIAN (LINE CONSTRUCTION)**

| | | |
|---|---|---|
| Equipment Operator | $ 38.38 | 18.60 |
| Groundman. | $ 29.96 | 17.64 |
| Lineman | $ 50.11 | 19.88 |

**ELECTRICIAN**

| | | |
|---|---|---|
| All Areas | $ 39.08 | 20.00 |

| | | |
|---|---|---|
| **IRONWORKER** | $ 30.43 | 25.22 |

**LABORER**

| | | |
|---|---|---|
| Group 1 | $ 27.71 | 12.36 |
| Group 2 | $ 30.87 | 12.36 |
| Group 3 | $ 31.10 | 12.36 |
| Group 4 | $ 32.12 | 12.36 |

**GROUP 1**: Flag Person

**GROUP 2**: All General Labor work; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control Worker

**GROUP 3**: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker); Laser Equipment; Non-riding Rollers; Pipelayer; Posthole Digger (power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod-Cutter-power; Tampers

**GROUP 4:** Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman ($1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck Mounted Wagon Drill; Welder including Air Arc

**PAINTER** $ 36.00 12.84

Pavement Marking/Milling and related work. Includes operating marking and all other equipment and all work involved in application of pavement markings including epoxies, paints, tape, buttons, thermo-plastics, and any other products applied for traffic marking purposes and for directing and regulating traffic and cutting rumble strips.

**POWER EQUIPMENT OPERATOR**:

| | | |
|---|---|---|
| Group 1 | $ 32.47 | 12.77 |
| Group 2 | $ 34.55 | 12.77 |
| Group 3 | $ 35.70 | 12.77 |
| Group 4 | $ 36.67 | 12.77 |
| Group 5 | $ 38.05 | 12.77 |
| Group 6 | $ 39.27 | 12.77 |
| Group 7 | $ 41.95 | 12.77 |

**GROUP 1:** Air Compressor; Auto Fine Graders; Belt Finishing Machine; Boring Machine (small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front End Loader Under 1 CU Yard; Heavy Duty Drills; Herman Nelson Heater; Mulching Machine; Oiler, All Except Cranes & Shovels; Pumpman

**GROUP 2**: Air Doctor; Backhoe/Excavator/Shovel to and including 3 CU Yard; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine Large; Broom, Self-Propelled; Concrete Travel Batcher; Concrete Float & Spreader; Concrete Bucket Dispatcher, Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer; Rubber-Tired, Push & Side Boom; Elevating Grader/Gradall; Field Equipment Serviceman; Front End Loader 1 CU Yard to including 5 CU Yard; Grade Setter; Heavy Duty Drills, All Types; Hoist/Tugger, All; Hydralift & Similar; Industrial Locomotive; Motor Patrol, Except Finish; Mountain Skidder; Oiler - Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/Grout Machine; Punch Truck; Roller, Other Than Asphalt; Roller, Sheepsfoot, Self-Propelled; Roller, 25 Tons and Over; Ross Carrier; Rotomill Under 6 Ft; Trenching Machine; Washing/Screening Plant

**GROUP 3**: Asphalt Paving Machine; Asphalt Screed; Backhoe/Excavator/Shovel Over 3 CU Yard; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes; Creter; Cranes, Electric Overhead; Cranes 24 Tons and Under; Curb Machine/Slip Form Paver; Finish Dozer; Front End Loader Over 5 CU Yard; Mechanic/Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, Over 6 FT; Scraper, Single, Twin or Pulling Belly Dump; Yo-Yo Cat

**GROUP 4**: Asphalt/Hot Plant Operator, Cranes, 25 Tons to 44 Tons; Crusher Operator; Finish Motor Patrol; Finish Scraper

**GROUP 5**: Cranes, 45 Tons To Including 74 Tons

**GROUP 6**: Cranes, 75 Tons To Including 149 Tons; Crane, Whirley (All)

**GROUP 7**: Cranes,150 Tons To Including 250 Tons (Add $ 1.00 For Every 100 Tons Over 250 Tons; Crane, Tower (All)

**TRUCK DRIVER**

| | | |
|---|---|---|
| Group 1 | $ 28.21 | 12.57 |
| Group 2 | $ 35.74 | 12.57 |

**GROUP 1**: Pilot Car

**GROUP 2**: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and Similar Equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/ Tireperson; Truck Mechanic; Trucks With Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average

rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

**"CONTRACTOR REQUIREMENTS AND ACKNOWLEDGMENT FOR WORKING ON RAILROAD RIGHT-OF-WAY"**

This document must be dated and signed by the Contractor and submitted to the State before occupying or working on Railroad right-of-way.

1) No change, which has a direct effect on the Railroad, will be made to construction plans without submitting revised plans and receiving approval from the Railroad. Work covered by the plans, that requires flagging, will be covered by the Railroad/Highway Agreement. For work that is a result of the contractor's discretion, flagging protection will be required when equipment crosses or is working within 25 feet (7.62 meters) of center of any live track. When deemed necessary by local Railroad officers, a flagman may be required at all times while working on Railroad right-of-way in high density rail traffic area.

2) Crossing of any Railroad tracks must be done at approved locations and must be full depth timber, rubber, etc. Any equipment with steel wheels, lugs or tracks must not cross steel rails without the use of rubber tires or other approved protection. This shall apply specifically to, but not be limited to, access for Contractor furnished gravel, borrow or waste sites. The Contractor will be required to obtain a permit from the Railroad, and comply with any provisions thereof, before using any private Railroad crossings. All track crossing locations must be covered by a Private Roadway and Crossing Agreement. This does not apply to any public crossing.

3) Costs of flagging or planking protection of the tracks, which are a direct result of the planned construction, will be paid for by the State. Costs of flagging, planking for protection of the tracks, installation of new crossings or other work caused by the Contractor's discretion, will be paid by the Contractor.

4) When work to be performed by the Contractor is not covered in the Railroad/Highway agreement, the Contractor must furnish a plan to the Railroad for approval showing details as to how any work that may affect the Railroad will be accomplished.

5) Storing of construction materials or any other material, including dirt, sand, etc., within the Railroad right-of-way, will not be allowed unless covered by an easement, construction permit, or Contractor's permit/lease.

6) Construction within 25 feet (7.62 meters) of the center of any track not covered by the Railroad/Highway agreement will require plan approval and authorization by the Railroad Superintendent Maintenance and Engineering. This includes, but is not limited to, any excavation, slope work and driving of sheet piling.

7) No vehicles, equipment or machines shall be parked or stored unattended within 25 feet (7.62 meters) of any track, on railroad right-of-way, without specific written approval of the Railroad.

8) When any work is to be performed on Railroad property by the Contractor that is not shown in the construction plans, the Contractor must submit a detailed plan of the work to the Railroad for their approval.

CONTRACTOR'S ACKNOWLEDGMENT:

_____
Company

By: _____
Name

_____
Title

_____
Date

WORK SITE LOCATION:

_____
Town

_____
State

_____
Project #

Rev. 01/01/04

FHWA-1273 -- Revised July 5, 2022

**REQUIRED CONTRACT PROVISIONS**
**FEDERAL-AID CONSTRUCTION CONTRACTS**

I. General
II. Nondiscrimination
III. Non-segregated 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
XI. Certification Regarding Use of Contract Funds for Lobbying
XII. Use of United States-Flag Vessels:

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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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.

**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 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 or other knowledgeable company official.

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 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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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.

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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**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.

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 more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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** (29 CFR 5.5)

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 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, 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 Administrator for determination. The 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 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** (29 CFR 5.5)

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** (29 CFR 5.5)

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 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 WH–347 is available for this purpose from the Wage and Hour Division Web 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 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), 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 permissible deductions as set forth in 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 18 U.S.C. 1001 and 31 U.S.C. 231.

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** (29 CFR 5.5)

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 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 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. 23 CFR 230.111(e)(2). 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 as provided in 29 CFR 5.5.

**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 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, 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** (29 CFR 5.5)

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**

Pursuant to 29 CFR 5.5(b), 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 in excess of forty hours in such workweek. 29 CFR 5.5.

**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 currently provided in 29 CFR 5.5(b)(2)* 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. 29 CFR 5.5.

* $27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

**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. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 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. 29 CFR 5.5.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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 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” in paragraph 1 of Section VI 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: (based on longstanding interpretation)

(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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

**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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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, 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 Part 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 11, 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** (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

**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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

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 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 CFR 180.325.

* * * * *

**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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. **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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 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 System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

* * * * *

**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:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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 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.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent 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. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 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 Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)
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.

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.

## Supplemental Revisions for FHWA Form-1273 (Dated May 1, 2012)
## Required Contract Provisions
## Federal-Aid Construction Contracts

The following are supplementary or amendatory to the May 1, 2012, FHWA Form-1273 insofar as they apply to this contract:

Add the following provisions in accordance with the FHWA memo dated December 11, 2015:

Utilize privately owned United States-flag commercial vessels to ship at least 50 percent 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.

Furnish within 20 days following the date of loading for shipments originating within the United States or within 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 above paragraph 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.

**SPECIAL PROVISIONS**
**Rev. 3-15-02**
**EEO AFFIRMATIVE ACTION REQUIREMENTS ON**
**FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS**

Federal-aid contractors are hereby notified they are subject to the OFCCP goals and timetables for minority and female participation expressed below. Compliance with the goals and OFCCP affirmative action efforts for contracts and subcontracts consisting of $10,000 or more will be determined by OFCCP officials.

---

**APPENDIX A**

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| | |
|---|---|
| GOALS FOR FEMALE PARTICIPATION EACH TRADE | 6.9% |
| TIMETABLES | GOALS FOR MINORITY PARTICIPATION IN EACH TRADE |
| 153 Great Falls, MT | |
| SMSA (Standard Metropolitan Statistical Area) Counties | |
| 3040 Great Falls, MT | 3.2% |
| Cascade County | |
| Non-SMSA Counties | 4.1% |
| Blaine, Broadwater, Chouteau, Fergus, Glacier, Hill, Jefferson, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Toole, Valley, Wheatland | |
| 154 Missoula, MT | |
| Non-SMSA Counties | 2.7% |
| Beaverhead, Deer Lodge, Flathead, Granite, Lincoln, Madison, Mineral, Lake Missoula, Powell, Ravalli, Sanders, Silver Bow | |
| 155 Billings, MT | |
| SMSA Counties | |
| 0880 Billings, MT | 3.3% |
| Yellowstone County | |
| Non-SMSA Counties | 3.3% |
| Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Park, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux, Yellowstone Nat'l Park | |
| Non-SMSA Counties | |
| Daniels, Sheridan, Richland, Roosevelt | 4.4% |

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 nonfederally 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 working 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.