

PS&E CHECKLIST INSTRUCTIONS

The PS&E Checklist is to be completed by the local agency in accordance with the following instructions and attached to the PS&E Certification.

I. HIGHWAY SYSTEM

Some PS&E requirements depend on the whether the project is on or off the National Highway System (NHS). See *Local Assistance Program Guidelines (LAPG)*, Chapter 3 Section 3.3 “Federal-Aid Routes and Functional Classifications,” for a listing of the local agency NHS routes.

Check the appropriate box indicating on which system the project is located.

II. FUNCTIONAL CLASSIFICATION

Federal-aid eligibility, design standards as well as some PS&E requirements depend on the functional classification of the route the project is on. See LAPG, Chapter 3, “Federal-Aid Routes and Functional Classifications,” for a discussion of the functional classification system.

Check the appropriate box

III. TYPE OF CONSTRUCTION

Design standards as well as some oversight responsibilities depend on the type of construction. See Chapter 2 of this manual for definitions and check the appropriate box.

IV. METHOD OF CONSTRUCTION

A. CONTRACTING METHOD

Unless justified by a PIF (Exhibit 12-F in this chapter), all federal-aid construction contracts must be awarded to the lowest responsible bidder of a competitive bid process. For “Delegated” projects that are subject to minimal FHWA oversight, Caltrans must approve the PIF if it meets the conditions described in Chapter 12. Caltrans and FHWA must approve the PIF for “High Profile” projects that are subject to a high degree of FHWA oversight before accepting the local agency’s PS&E Certification.

Check the appropriate box.

B. FORCE ACCOUNT (DAY LABOR)

A PIF (Exhibit 12-F in this chapter) must justify any force account construction work performed by the local agency. When the entire project will be constructed by the local agency, and the project is “High Profile,” the PIF shall be submitted to the District Local Assistance Engineer (DLAE) for Caltrans and FHWA approval before accepting the local agency’s PS&E Certification. The PIF will be approved by Caltrans for all other force account (day labor) work.

Check the appropriate boxes and process the PIF as required.

V. ENVIRONMENTAL ANALYSIS

The preparation of PS&E must reflect findings of the environmental analysis performed for the project. By checking the box, the agency certifies that the necessary actions called for by the environmental documents have been responded to in the PS&E. Failure to check the box will result in denial of the Request for Authorization.

VI. VALUE ENGINEERING (VE) ANALYSIS

The application of value engineering (VE) is required for: (1) all federal-aid highway projects with a total estimated project cost of \$25 million or more, and (2) all bridge projects with a total estimated project cost of \$20 million or more. Check appropriate box.

VII. GEOMETRIC DESIGN STANDARDS

If the project does not change existing geometrics, Section A and B do not apply and the local agency is not required to check any boxes in these sections.

A. GEOMETRIC DESIGN STANDARDS USED

New and reconstruction projects on the NHS shall be designed in accordance with Standards as defined in the current edition of *A Policy on Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials (AASHTO). The minimum standards for geometric design of local federal-aid resurfacing, restoration and rehabilitation (3R) projects on the NHS are shown in Tables 11-1 through 11-10 in Exhibit 11-A. Local geometric design standards that have been developed for use on locally funded new and reconstruction, or 3R projects off the NHS, may be used subject to the conditions listed in Chapter 11, "Design Standards."

Check appropriate box if this section applies.

B. DEVIATIONS FROM CONTROLLING CRITERIA

The controlling criteria listed are considered to be of primary importance for highway safety, and deviations require design exception approval procedures as described in Chapter 11, "Design Standards," of the LAPM. Check whether the criteria have been met on this project. If a design exception has been approved, indicate the approval date. Documentation shall be retained in the project files.

VIII. BRIDGE DESIGN PROCEDURES

All bridges shall be designed in accordance with the current edition of the *Caltrans Bridge Design Specifications Manual*. Check if requirement met, or if the project does not include any bridge construction indicate requirement does not apply.

IX. STANDARD PLANS

For projects off the State Highway System, the local agency may use Caltrans Standard Plans, Standard Plans for Public Works Construction, or subject to the conditions described in Chapter 11, "Locally Approved Standard Plans." Check appropriate box.

X. PROJECT PLANS AND SPECIFICATIONS

Project plans shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects. Check boxes to indicate requirements are met. Failure to check both boxes will result in denial of the Request for Authorization.

Erosion control plans may be required, see Section 12.7 Plans, in the LAPM. If required, check box.

Project plans and specifications may be required to meet the Americans with Disabilities Act (ADA) requirements under federal 28 CFR, Part 35 or Part 36. Whenever applicable, project plans will need to comply with the federal 28 CFR, Part 35 or Part 36, and the *California and Local Building Codes* within the project limits. In accordance with 28 CFR Sec. 35.151, curbs ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11 "Design Standards," and Section 12.7 of this chapter. If ADA requirements apply and will be complied with, check box.

XI. STANDARD SPECIFICATIONS

For projects off the State Highway System, the local agency may use *Caltrans Standard Specifications, the Standard Specifications for Public Works Construction*, or subject to the conditions described in Chapter 11, "Locally Approved Standard Specifications." Check appropriate box.

XII. REQUIRED FEDERAL CONTRACT PROVISIONS (SEE ATTACHMENTS A thru N, THIS EXHIBIT)**A. GENERAL FEDERAL REQUIREMENTS**

General provisions must be included to reference FHWA Form 1273, Performance of Previous Contract, Noncollusion Provision and Participation by Minority Business Enterprises in Subcontracting. Caltrans SSP - Section 14. "Federal Requirements for Federal-aid Construction Projects" (Attachment A, pages FR-1 & FR-2) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

B. FHWA FORM 1273**1. Incorporation of FHWA Form 1273 into Contract**

FHWA Form 1273- Required Contract Provisions, Federal-aid Construction Contracts, (Exclusive of Appalachian Contracts)(Attachment B, pages FR-3 thru FR-14) shall be made a part of, and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. The provisions contained in FHWA Form-1273 are generally applicable to all federal-aid construction projects. Except as described below, the form may not be modified.

Check the appropriate box (i.e., unmodified or modified) and indicate page number.

2. Modification of FHWA Form 1273

If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections 2.a. thru 2.d.

a. Section IV. Payment of Predetermined Wages

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

b. Section V. Statements and Payrolls

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

c. Section VI. Record of Materials, Supplies, and Labor

This section applies to all federal-aid projects in excess of \$1 million only on the NHS. Certain projects are excluded on the NHS. If not applicable, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

d. Section VII. Subletting or Assigning the Contract

This section applies to all federal-aid projects. This section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply, if the local agency chooses 50 percent as the minimum percentage of work, excluding any identified specialty items, as specified in the *Caltrans Standard Specifications* or the Greenbook Specifications. A special provision must be included specifying which percentage is to be used.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

C. CERTIFICATION/DISCLOSURE FORMS

The following certification/disclosure forms shall be included in all federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used.

Equal Employment Opportunity Certification (Attachment C)
Noncollusion Affidavit (Attachment D)
Debarment and Suspension Certification (Attachment E)

Nonlobbying Certification for Federal-aid Contracts (Attachment F)
Disclosure of Lobbying Activities (Attachment G)

Check appropriate box (i.e., Attachments or equivalents) and indicate page number.

D. LIQUIDATED DAMAGES

Provisions for liquidated damages shall be included in all federal-aid contracts on the NHS (see Chapter 12 “Plans, Specifications & Estimate,” of the LAPM for requirements.). Caltrans SSP Section 4. “Beginning of Work, Time of Completion and Liquidated Damages” (Exhibit 12-E, Attachment I, also in Sample Notice to Contractors & Special Provisions) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)/SUBCONTRACTING

1. UDBE Goal

Individual UDBE contract goals will be established based on the criteria for establishing contract goals identified in the local agency’s AADPL. Complete evaluation documentation is required and shall be retained for each contract (see DBE references in the LAPM). For contracts that contain a specific UDBE goal, Caltrans SSPs (and the referenced *Caltrans Standard Specifications*) are required to describe the DBE policy, the UDBE contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting UDBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting. “Proposal Requirements and Conditions (Attachment H)” includes requirements for UDBE subcontract listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and the UDBE goal for the contract.

In some cases, the contract UDBE goal may be zero due to the extremely limited subcontracting opportunities for UDBEs, the lack of certified UDBEs in the geographic area in which work is to be performed, or other reasons. Documentation is required verifying that the local agency has determined that a zero percent UDBE goal is appropriate. Documentation may be based on the AADPL methodology with the specific project-related work codes and UDBEs highlighted, or, if the project had not been included in the AADPL methodology, a separate contract goal methodology must be provided. The DLAE will review and approve the "zero" goal methodology.

In some cases there may be no contract goal (which is different than zero percent goal) if, for example, the AADPL goal has already been met for the federal fiscal year, or the contract is “sole-source” or “non-profit”.

Fill in the required UDBE goal information before completing the remainder of this section.

2. Contract Provisions

For all federal-aid projects, Caltrans SSPs (and the referenced *Caltrans Standard Specifications*), or equivalent provisions, are required to describe subcontractor and DBE Program Policy, eligibility criteria, procedures for counting DBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting.

Caltrans SSP Section 2. “Proposal Requirements and Condition” (Exhibit 12-E, Attachment H also in Sample Notice to Contractors & Special Provisions) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, DBE, and other requirements.

Check appropriate boxes (i.e., Caltrans SSPs or equivalent provisions) and indicate page number. If equivalent provisions are used, attach a complete listing, including page numbers.

F. BUY AMERICA SPECIFICATION

Current Buy America regulations are discussed in Section 12.9 of the LAPM. Buy America requirements do not apply to minimal use of the material such that the cost, delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater. (Attachment M)

If the Buy America requirement applies, check the appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number. If the requirement does not apply, check the last box.

G. FEDERAL TRAINEES

Chapter 12, “Plans, Specifications & Estimate,” of the LAPM includes information for On-the-Job Training. If a Federal Trainee goal is not required, check the appropriate box. If a goal is required, check appropriate box (i.e., Caltrans SSP or equivalent), indicate the trainee goal and the page number. (Attachment N)

H. FEDERAL WAGE RATES

If payment of federal predetermined wages are required per instructions in Subparagraph B.2.a “Section IV. Payment of Predetermined Wages,” they shall be physically incorporated into the final contract documents and in all related subcontracts signed by the local agency and the contractor.

Check appropriate box (i.e., Federal Wages Rates are included in the contract advertising package, referenced by the Internet Web site address, or not required) and indicate page number if applicable.

It must be emphasized that if the Internet Web site address is used in the advertising package, the final contract package upon signed by the local agency and the contractor, must be physically contain the Federal Wage Rates or the Federal Wage rates as revised by addendums, if any addendums were issued.

By checking the box the local agency is indicating that they are aware of the federal-aid “10-day rule” for federal wage rates. See Section 12.9 Required Federal Contract Provisions – Federal Wage Rates for local agency requirements under the “10-day rule.”

I. RELATIONS WITH RAILROAD

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company. The pertinent portions of the agreement applicable to any protective services required during performance of the work shall be included in the project specifications and special provisions.

Check appropriate box (i.e., provisions are included or not required). If provisions are included, indicate page number.

J. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDS

In accordance with Section 902 of the Recovery Act of 2009, the U.S. Comptroller General and the Inspector General shall have the authority to examine records and interview employees. Recovery Act projects also require additional accountability reporting. Check appropriate box (i.e. provisions are included or not required). If provisions are included, indicate page number.

XIII. RESTRICTED CONTRACT PROVISIONS

Unless otherwise noted, see Section 12.10 of Chapter 12 for detailed guidance.

A. INDIAN PREFERENCES

Generally, local agencies may not use local hiring practices. However, SAFETEA-LU permits an Indian employment preference provision for projects on or near Indian reservations or Indian lands. Check the appropriate box.

B. BONDING AND PREQUALIFICATION

Bonding and prequalification procedures are not required for federal-aid projects. However, any procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall not be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of California. Check appropriate boxes, and if bonding and/or prequalification are used, check the last box to indicate the requirement will be met.

C. PRICE ADJUSTMENT CLAUSES

Price adjustment clauses may be implemented if certain conditions are met. If these clauses are used, the local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

D. WARRANTY CLAUSES

Warranty clauses may be implemented if the conditions described in Section 12.12 of Chapter 12 are met. The local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

E. PROPRIETARY ITEMS

The use of proprietary items is restricted as described in Section 12.12 in Chapter 12. If the use does not meet these restrictions, a Public Interest Finding justifying the use must be approved by the local agency and documented in the project files. Check the appropriate box.

XIV. MATERIALS AND EQUIPMENT

Unless otherwise noted, see Section 12.12 of Chapter 12 for details.

A. PUBLICLY OWNED EQUIPMENT (FOR USE BY CONTRACTOR)

The use of publicly owned equipment on a project going to bid must be justified with a Public Interest Finding. The local agency may approve the use provided it meets conditions described in Chapter 12. Check the appropriate box.

B. EQUIPMENT PURCHASES FOR LOCAL OWNERSHIP

The cost of equipment purchased by the local agency or by the contractor with ownership transferred to the local agency for construction engineering is limited. Check the appropriate box.

C. Convict Produced Materials

Materials produced by convict labor may be used on any federal-aid project if they meet certain conditions. Check appropriate box.

D. Local Agency Furnished Materials

The use of local agency furnished materials not acquired on the basis of competitive bidding must be supported by a Public Interest Finding justifying the use (see Section 12.13 of Chapter 12). The justification must be approved by the local agency and documented in the project files. If these materials are included, check the appropriate box indicating the method of acquisition.

XV. PRELIMINARY ESTIMATE

An estimate of the contract items of work must be prepared in a format which describes the items of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A “ Preliminary Estimate of Cost,” or equivalent). The estimate must be broken down into items sufficient in detail to meet the stated requirements. Check boxes if these requirements are met.

If the project is funded with more than one type of federal-aid it must be segregated by fund types (see Chapter 3, “Project Authorization,” of the LAPM). Check box if this requirement is met.

XVI MAJOR PROJECTS WITH TOTAL COSTS EXPECTED TO EXCEED \$100 MILLION OR \$500 MILLION

The federal SAFETEA-LU requires that a local agency receiving any amount of federal financial assistance for “major” projects with an estimated total costs exceeding \$100 million must have a financial plan and for projects exceeding \$500M must also have a project management plan. For details of the required submittal and approval of these two plans, which are required for all “major” projects exceeding the two estimated total costs, refer to Chapter 2 “Roles and Responsibilities” of the LAPM .

XVII. LOCAL AGENCY SIGNATURE

The Federal Contract Provisions Checklist shall be signed by the person preparing the contract specifications. The checklist shall be signed even if prepared by the same person who will sign the PS&E Certification.

XVIII. CALTRANS ACCEPTANCE

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in Chapter 12, “Plans, Specifications & Estimate,” of the LAPM and sign the bottom of the form.

SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL.—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

PERFORMANCE OF PREVIOUS CONTRACT.—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION.—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture _____

2. Address of joint venture _____

3. Phone number of joint venture _____

4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) _____

a. Describe the role of the DBE firm in the joint venture.

b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____

5. Nature of the joint venture's business _____

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of DBE ownership? _____

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).

- a. Profit and loss sharing.
- b. Capital contributions, including equipment.
- c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

a. Financial decisions _____

b. Management decisions, such as:

1. Estimating _____

2. Marketing and sales _____

3. Hiring and firing of management personnel _____

4. Purchasing of major items or supplies _____

c. Supervision of field operations _____

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

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 08-07-95

..... Name of Firm Name of Firm
..... Signature Signature
..... Name Name
..... Title Title
..... Date Date

Date _____
 State of _____
 County of _____

On this ____ day of _____, 19 __, before me appeared (Name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____
 Commission expires _____

[Seal]
 Date _____
 State of _____
 County of _____

On this ____ day of _____, 19 __, before me appeared (Name) _____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____
 Commission expires _____

[Seal]

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

(Exclusive of Appalachian Contracts)

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. 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.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

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

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

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively

administering and promoting an active contractor program of EEO 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 who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

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

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

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

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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

a. The contractor will conduct periodic inspections of project sites to 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 his 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 his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA 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 minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

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

(1) The number 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;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers 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 (29 CFR 3)] issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

b. 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.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said 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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. 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 or subcontractors, as appropriate, shall either pay the benefit

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

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) 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 DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

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

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL 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 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such 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 the Regulations, 29 CFR 3;

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

e. 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 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635); the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).

a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.

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 on the contract as a whole and in general are to be limited to minor components of the overall contract.

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

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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 re-

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garding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized

for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 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 primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

g. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. 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.

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.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-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;

c. 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 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

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 may decide the method and frequency by which it determines the el-

igibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

**Certification Regarding Debarment,
Suspension, Ineligibility and Voluntary
Exclusion-Lower Tier Covered Transactions**

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

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

**XII. CERTIFICATION REGARDING USE OF
CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Minority Utilization Goals

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Toulumne	12.3 24.3 19.8

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179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	19.1 26.1 23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	11.9 28.3 21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	16.9 18.2

For each July during which work is performed under the contract, you and each non-material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

Training

This section applies if a number of trainees or apprentices is specified in the special provisions. As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement. If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the City/County of _____:

1. Number of apprentices or trainees to be trained for each classification.
2. Training program to be used.
3. Training starting date for each classification.

Obtain the City/County of _____ approval for this submitted information before you start work. The City/County of _____ credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status, or in which the employee has been employed as a journeyman.
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training.

Ask the employee if the employee has successfully completed a training course leading to journeyman status, or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The City/County of _____ and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - 1.1. Meet your equal employment opportunity responsibilities.
 - 1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period.
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts.

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of _____ reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training.
2. For off-site training if the apprentice or trainee is currently employed on a federal-aid project and you do at least one of the following:
 - 2.1. Contribute to the cost of the training.
 - 2.2. Provide the instruction to the apprentice or trainee.
 - 2.3. Pay the apprentice's or trainee's wages during the off-site training period.
3. If you comply with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill.
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification, or until the apprentice or trainee has completed the training program.

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training.
2. Certification showing the type and length of training satisfactorily completed.

Maintain records and submit reports documenting your performance under this section.

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL
SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE
CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)*

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts, which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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Noncollusion Affidavit

(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY / COUNTY of _____
DEPARTMENT OF PUBLIC WORKS.

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

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NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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

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

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**INSTRUCTIONS FOR COMPLETION OF SF-LLL,
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.
SF-LLL-Instructions Rev. 06-04-90«ENDIF»

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SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out and executed. The bidder's bond form included in that book may be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Bid book. Signing the Bid book shall also constitute signature of the Noncollusion Affidavit.

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 Title 49 CFR (Code of Federal Regulations), Part 26 in the award and administration of US 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. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

2-1.015--FEDERAL LOBBYING RESTRICTIONS.--Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower-tier sub-recipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in the Bid book. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Bid book. Signing the Bid book shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
- (3) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal Action.

2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE).—This project is subject to Title 49 CFR 26.13(b):

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.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the Agency specifies a goal for Underutilized Disadvantaged Business Enterprises (UDBEs). UDBE is a firm that meets the definition of DBE and is a member of one of the following groups:

1. Black Americans
2. Native Americans
3. Asian-Pacific Americans
4. Women

References to DBEs include UDBEs, but references to UDBEs do not include all DBEs.

Make work available to UDBEs and select work parts consistent with available UDBE subcontractors and suppliers.

Meet the UDBE goal shown in the Notice to Bidders or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the UDBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

http://www.dot.ca.gov/hq/bep/find_certified.htm

Only UDBE participation will count towards the UDBE goal. DBE participation will count towards the Agency's Annual Anticipated DBE Participation Level and the California statewide goal.

Credit for materials or supplies you purchase from UDBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a UDBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a UDBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a UDBE that is neither a manufacturer, nor a regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a UDBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55.

UDBE Commitment Submittal

Submit UDBE information on the "Local Agency Bidder UDBE Commitment (Construction Contracts)," Exhibit 15-G1 form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the UDBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the UDBE Commitment form to the Agency. UDBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the UDBE Commitment form unless the Agency requests it. If the Agency requests you to submit a UDBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each UDBE stating that it is participating in the contract. Include confirmation with the UDBE Commitment form. A copy of a UDBE's quote will serve as written confirmation that the UDBE is participating in the contract.

If you do not submit the UDBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

Good Faith Efforts Submittal

If you have not met the UDBE goal, complete and submit the "UDBE Information - Good Faith Efforts," Exhibit 15-H form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by UDBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your UDBE Commitment form shows that you have met the UDBE goal or if you are required to submit the UDBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the UDBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to UDBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the UDBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified UDBEs through all reasonable and available means and provide sufficient time to allow UDBEs to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and their price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the UDBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Bid protests are to be delivered to the following address. (Agency to provide information)

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned together with the contract bonds, to the Agency so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: (Agency to provide detailed information if this paragraph is used)

A "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form is included in the Bid book to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

The successful bidder's "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies.

The successful bidder is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the successful bidder is encouraged to submit a copy of the joint venture agreement. The "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form shall be completed and returned to the Agency by the successful bidder with the executed contract and contract bonds.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work" in Section 8-1.06 "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City/County of _____.

This work shall be diligently prosecuted to completion before the expiration of _____ WORKING DAYS beginning on the 15 calendar day after approval of the contract.

(INSERT AMOUNT OF LIQUIDATED DAMAGES)

The Contractor shall pay to the City/County of _____ the sum of \$ _____ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

Liquidated Damages

Liquidated Damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater than the estimated field construction engineering cost may be specified, provided detailed reasons are given to support the greater amount. In every case, show the calculations that support the recommended rate. Liquidated damages are not to be used as disincentives to encourage timely completion.

Use the following formula for highway construction projects to avoid excessive liquidated damages:

$$\frac{L\% \text{ (See Table below) } \times \text{Engineer's Estimate} + \text{RE Office Expenses}^*}{\text{Working Days}^{**}} = \text{Liq Dam/calendar day}$$

* Resident Engineer office expenses over the life of the contract should be added unless the cost is already included in the Engineer's Estimate.

** Working days used to calculate liquidated damages should not include water pollution establishment or plant establishment days.

**LIQUIDATED DAMAGES
 TABLE (L%)**

Project Estimate	Project Type					
	Resurfacing*/Rehab	New Highway	Realignment/ Widening	Landscaping	Soundwall	Others
Over \$30 million	10 %	10 %	13%	15 %	15 %	15 %
\$10 million to \$30 million	10 %	12 %	15 %	15 %	15 %	15 %
\$5 million to \$10 million	10 %	15 %	15 %	15 %	15 %	15 %
\$750k to \$5 million	15 %	15%	15 %	18 %	18 %	15 %
Less Than \$750k	15 %	20 %	20 %	18 %	20 %	15 %

* Resurfacing projects include AC Surfacing, seal coats, slurry seals, and so on.

The calculated liquidated damages should be rounded up in \$100 increments to determine the amount to be specified.

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Required for ALL construction contracts administered under the Caltrans Standard Specifications

5-1. SUBCONTRACTOR AND DBE RECORDS

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" Form CEM-2402(F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within ninety days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

5-1. DBE CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403(F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within ninety days from the date of contract acceptance.

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5-1. PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by you in Bid book shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

UDBEs must perform work or supply materials as listed in the "Local Agency Bidder UDBE Commitment" form specified under Section 2, "Bidding," of these special provisions. Do not terminate a UDBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Agency.

The Agency grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed UDBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed UDBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed UDBE does not have a valid license under Contractors License Law.
4. Listed UDBE fails or refuses to perform the work or furnish the listed materials.
5. Listed UDBE's work is unsatisfactory and not in compliance with the contract.
6. Listed UDBE delays or disrupts the progress of the work.
7. Listed UDBE becomes bankrupt or insolvent.

If a listed UDBE subcontractor is terminated, you must make good faith efforts to find another UDBE subcontractor to substitute for the original UDBE. The substitute UDBE must perform at least the same amount of work as the original UDBE under the contract to the extent needed to meet the UDBE goal.

The substitute UDBE must be certified as a DBE at the time of request for substitution.

The Agency does not pay for work or material unless it is performed or supplied by the listed UDBE, unless the UDBE is terminated in accordance with this section.

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5-1. SUBCONTRACTING

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City/County of _____ may exercise the remedies provided under Pub Cont Code § 4110. The City/County of _____ may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations web site at: <http://www.dir.ca.gov/dlse/debar.html>

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower-tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due or to become due, until correction is made. Failure to comply may result in termination of the contract.

5-1. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

5-1._ PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The local agency must include one of the following three provisions (if using *Caltrans Standard Specification*, modify or delete paragraphs 9-1.06 and 9-1.065) to ensure prompt and full payment of any retainage from the prime contractor, or subcontractor to a subcontractor.

(EITHER)

No retainage will be withheld by the agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

(OR)

No retainage will be held by the agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

(OR)

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

5-1. FEDERAL REQUIREMENTS (AMERICAN RECOVERY AND REINVESTMENT ACT)

Under the American Recovery and Reinvestment Act (ARRA) of 2009, 9 USC § 902:

SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE.

- (a) ACCESS.—Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized:
- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
 - (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
- (b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Under ARRA of 2009, 9 USC § 1515(a):

SEC. 1515. ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.

- (a) ACCESS.—With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
 - (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.
- (b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

Immediately notify the Engineer if you have been contacted by the U.S. Comptroller, Inspector General, or their representatives. Used in projects with ARRA Federal-aid funds.

Used in projects with American Recovery and Reinvestment Act Federal-aid funds.

5-1. MONTHLY EMPLOYMENT REPORT (AMERICAN RECOVERY AND REINVESTMENT ACT)

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, submit a completed Monthly Employment Report form by the fifth of each month for the previous month. For the form, go to: <http://www.dot.ca.gov/hq/construc/forms/cem1204.pdf>

If you fail to submit a complete and accurate report, the Department withholds 2 percent of the monthly progress estimate. The Department does not withhold more than \$10,000 or less than \$1,000. The Department releases the withhold upon submission of the completed form.

Used in projects with American Recovery and Reinvestment Act Federal-aid funds

3-1.02 DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, the successful bidder must provide the Department a D-U-N-S number.

Complete and sign the Data Universal Numbering System (D-U-N-S) Number form included in the contract documents. This form must be submitted with the executed contract.

If your company does not have a D-U-N-S number, you can obtain one by contacting Dun & Bradstreet at:

<http://dnb.com/us/>

If you fail to submit this information with the executed contract, the City/County of _____ will not approve the contract.

5-1. BUY AMERICA REQUIREMENTS. -- Attention is directed to the “Buy America” requirements of the Title 23 United States Code, Section 313 and the regulations adopted pursuant thereto. In accordance with said law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of such steel or iron materials shall be considered a manufacturing process subject to the “Buy America” requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, Certificates of Compliance, of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall also specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions allowed herein. The requirements imposed by said law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of any foreign steel and iron prior to incorporating such materials into the work.