



## *Local Programs Procedures*

---

### **LPP 97-03 Revised PS&E Procedures**

References: LPP 95-07 "Reengineering," Attachment 7, Plans, Specifications and Estimate (PS&E)

Effective Date: July 1, 1997

Approved: \_\_\_\_\_

ALAN P GLEN  
Assistant Program Manager  
Design and Local Programs

---

The purpose of this Local Program Procedure (LPP) is to describe revised PS&E procedures for local Federal-aid projects off the National Highway System. The revisions are required because of deficiencies found during a process review conducted on PS&E packages prepared by local agencies. The revised procedures include the following:

- A new checklist and step-by-step instructions to help local agencies determine which federal contract provisions are required for their projects,
- Samples of all the required federal provisions,
- A description of how to obtain a complete sample set of "Boiler Plate" contract documents from Caltrans' Local Programs Home Page on the Internet.

These are interim procedures to be effective until the Local Assistance Procedures Manual is published. The checklist and instructions will be incorporated into an updated PS&E Certification Letter and checklist at that time.

#### **EXISTING PROCEDURES**

Prior to reengineering of the Local Assistance Program, District Local Assistance Engineers (DLAEs) reviewed local agencies' PS&E packages before authorizing the projects for construction. Contract documents were checked to ensure that local agencies included the various standard contract documents required by regulations, which were promulgated by the Federal Highway Administration (FHWA) and other federal agencies.

With reengineering and the issuance of LPP 95-07, DLAEs were no longer required to review local agencies' PS&E packages. Instead, local agencies were delegated the responsibility of ensuring the required Federal-aid contract provisions were included in the contract. Local agencies are now required to send a PS&E certification and checklist along with the PS&E package when submitting a "Request for Authorization" for construction. Included in the certification is acknowledgment that Caltrans will not be performing a review, and should deficiencies be found in subsequent review, "...federal funding may be withdrawn."

Copies of the minimum required provisions were provided in LPP 95-07. Upon request, and where resources were available, DLAEs assisted local agencies with their PS&E packages by providing additional special provisions and other contract documents.

Between December 1, 1996 and February 28, 1997, a process review was conducted on PS&E packages submitted under the reengineered procedures. The process review found a significant number of the packages that did not include all required Federal-aid contract provisions and proposal notices. The process review was conducted so corrections could be made *before* the local agencies were given the authorization to proceed with construction. If the review had been performed on a "post-audit" basis, local agency projects with deficiencies could have lost all or a part of their federal funding.

## NEW PROCEDURES

Local agencies may start using the following new procedures upon the effective date of this LPP. The new procedures will be required for all PS&E certification letters submitted after July 31, 1997.

### New Federal Contract Provisions Checklist

Local Agencies will complete the new Federal Contract Provisions Checklist (Attachment I) and attach it to all PS&E Certification Letters submitted to the DLAE. (See LPP 95-07 for the requirement for PS&E Certification Letters.) The new checklist will be substituted for the "Specifications Checklist" section of the Certification Letter.

The checklist has been expanded to address the flexibility allowed under federal regulations and still ensure that the minimum required provisions are included in each set of contract documents. For instance, some provisions included in FHWA Form 1273 may not apply to some projects. This will depend on estimated cost, functional classification of the road, and whether the project is on the National Highway System (NHS). However, if any of the required provisions are left out of a construction contract, the project will not be eligible for federal reimbursement.

Instructions are included (Attachment II) in order to lead the local agency through the checklist and determine which of the various federal contract provisions are required. Samples of each required federal contract provision are included. These samples are based on *Caltrans Standard Specifications*, however, the local agency may use equivalent provisions based on other standard specifications as long as the intent of the federal requirement is met.

### Checklist Review by Caltrans

The DLAEs will review each checklist to ensure that the local agency has completed the form in accordance with the instructions in this LPP. Except as discussed below, this review will be limited to the actual checklist and will not involve a review of the actual contract documents.

### Contract Documents Review by Caltrans

At the discretion of the DLAE, a review of the contract documents will also be made to check that the correct provisions are included as indicated on the checklist. It is expected that at least one set of contract documents will be reviewed per year for each local agency. However, the DLAE will decide the number of documents that will be reviewed based on past experience with the agency,

the number of Federal-aid projects the agency has done since the reengineering of Local Assistance Procedures, and the amount of resources the district can redirect to this effort. Local agencies requesting reviews will be accommodated to the extent that resources are available.

The checklist has been designed to facilitate this review by providing space for the local agency to indicate the page numbers of the appropriate federal provisions. This review will help the local agencies become familiar with the use of the checklist and the corresponding federal contract provisions. It will not, however, relieve the local agency of responsibility for compliance with all federal requirements.

#### DLAE Acceptance of the Checklist

The DLAE will indicate acceptance of the checklist by checking the type of review (i.e., whether the checklist review included a review of the contract documents) and signing the form. The local agency's "Request for Authorization" for the construction phase of a project will not be forwarded to the Headquarters, Office of Local Programs for approval prior to acceptance by the DLAE.

#### Submittal of Plans, Specifications and Estimate (PS&E)

These new procedures do not change the requirement for local agencies to submit a complete PS&E package with the PS&E Certification Letter. As soon as the project is advertised, the Local Agency shall also furnish the DLAE one copy of the plans and special provisions or two copies if structures (bridges) are involved.

#### Follow-up Process Review

A follow-up process review will be conducted next year. This process review will be conducted on the more traditional "post audit" basis. It will review a random sample of PS&E packages submitted under these new procedures. Local agencies should be aware that if deficiencies are found during the follow-up process review, it may be too late to make corrections and the loss of all or a portion of the project Federal funding will result.

#### Sample "Boiler Plate" Contract Documents on the Internet

Microsoft Word versions of a complete sample set of "Boiler Plate" construction contract documents are available on the Internet, in the Caltrans Local Programs Home Page at:

<http://www.dot.ca.gov/hq/LocalPrograms/>

Follow the directions on the Home Page to "Sample Boiler Plate Contract Documents." The file is compressed into a "Sit" format which can be downloaded and edited on either a Mac or PC.

This sample includes a Notice to Contractors & Special Provisions, as well as a sample Proposal and Contract. These documents are in the July 1995, metric and the July 1992, English versions. They are edited versions of the Caltrans, Office Engineers, Standard Special Provisions and other contract documents which are used for Caltrans highway construction contracts.

#### Contents

The Notice to Contractors & Special Provisions are combined into one document. The Notice to Contractors provides prospective bidders with the bid opening date, time and

location where bids will be received and opened, a brief description of the project, the Disadvantaged Business Enterprise (DBE) goals, time and location of pre-bid meetings on DBE participation, notice that the project is subject to Buy America provisions, the

Engineer's Estimate, location for purchase of plans and specifications, as well as reference to federal wage rate information.

The Special Provisions (along with the *Caltrans Standard Specifications*) specifies to the contractor the terms of the contract including, but not limited to, when the contractor is to start, number of working days, liquidated damages, payment, work operations and items of work.

The Proposal and Contract are also combined into one document. The Proposal is for the bidder to complete. In addition to the name, address, etc., it contains the Engineer's Estimate, list of subcontractors, EEO certification, Public Contract Code requirements, Noncollusion Affidavit, Debarment and Suspension Certification, Nonlobbying Certification, and Bidders Bond. The Contract includes an agreement, Engineer's Estimate, payment bond, performance bond, local agency DBE information, federal wage rates, and Disclosure of Lobbying Activities.

This package is based on the way Caltrans prepares and administers construction contracts. It contains specifications that may not be required on locally administered projects. Therefore, the Home Page will include appropriate disclaimers for the use of this "Boiler Plate."

Current Federal wage rates are also available on the Home Page. LPP 97-01 "Federal Wage Rates Availability," issued on January 31, 1997, describes procedures for obtaining current federal wage rates from the Home Page. The omission of Federal Wage Rates in contract documents was the most common deficiency found in the PS&E process review.

Attachments

Attachment I

FEDERAL CONTRACT PROVISIONS CHECKLIST

This form is to be completed by the Local Agency and attached to the PS&E Certification. (Replaces "Specifications Checklist" on Page 4 of LPP 95-07, Attachment 7, Exhibit E). See Attachment II for Instructions. The referenced Exhibits are included in Attachment II.

Federal-aid Project No. \_\_\_\_\_ Date \_\_\_\_\_

A. GENERAL FEDERAL REQUIREMENTS (Check appropriate box and indicate page number.)

Page No.

- Caltrans SSP - SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS (Exhibit A, FR-1 & FR-2) is included.....
Equivalent provisions are included. ....

B. FHWA FORM 1273

1. Incorporation of FHWA Form 1273 into Contract (Check appropriate box and indicate page number.)

Page No.

- An unmodified copy of FHWA Form 1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS (Exhibit B, FR-3 thru FR-14) has been physically incorporated into this contract.....
A modified copy of FHWA Form 1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS has been physically incorporated into this contract.....

2. Modification of FHWA Form 1273 (Complete this section if the form has been modified.)

Project cost \_\_\_\_\_
Is the project on a Federal-aid Route? (See Note) Is the project on the NHS?
[ ] Yes [ ] Yes
[ ] No [ ] No
Note: All public roads other than those functionally classified as local roads or rural minor collectors are considered Federal-aid Routes. See Chapter 3 "Federal-Aid Routes and Functional Classifications" in the Local Assistance Program Guidelines .)

a. Section IV. Payment of Predetermined Wages (Check appropriate box.)

- Section IV has not been modified.
Section IV has been crossed out/ removed/ specified elsewhere in the contract that it does not apply (indicate type of modification).

b. Section V. Statements and Payrolls (Check appropriate box.)

- Section V has not been modified.

**Attachment I**

Section V has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**c. Section VI. Record of Materials, Supplies, and Labor** (Check appropriate box.)

Section VI has not been modified.

Section VI has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**d. Section VII. Subletting or Assigning the Contract** (Check appropriate box.)

Section VII has not been modified.

Section VII has not been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**C. CERTIFICATION/DISCLOSURE FORMS** (Check if included and indicate page number)

Page No.

*EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Exhibit C).....\_\_\_\_\_

*Noncollusion Affidavit* (Exhibit D) .....\_\_\_\_\_

*DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit E) .....\_\_\_\_\_

*NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS* (Exhibit F).....\_\_\_\_\_

*DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit G).....\_\_\_\_\_

Equivalent provisions (Attach complete listing, including page numbers.)

**D. LIQUIDATED DAMAGES** (Check appropriate box and indicate page number.) Page No.

Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit I, second page) is included in this contract.....\_\_\_\_\_

Equivalent provisions are included. ....\_\_\_\_\_

**E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

DBE Annual Goal _____	Date Annual Goal approved by DLAE _____
Project Goal _____	

If project has a specific goal, complete Section 1. If project does not have a specific goal, complete Section 2.

**1. Projects with specific goals.** (Check if included and indicate page number.)

Page No.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Exhibit H. Includes requirements for DBE subcontractor

**Attachment I**

listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and DBE Goal for project.) .....

- Caltrans SSP *SECTION 3. SUBMISSION OF DBE INFORMATION AND AWARD AND EXECUTION OF CONTRACT* (Exhibit I).....
- Caltrans SSP 5-1. *DBE RECORDS* (Exhibit J).....
- Caltrans SSP 5-1. *PERFORMANCE OF DBE SUBCONTRACTORS AND SUPPLIERS* (Exhibit K).....
- Caltrans SSP *LOCAL AGENCY BIDDER-DBE INFORMATION* (Exhibit L).....
- Equivalent provisions (Attach complete listing, including page numbers.).....

**2. Projects without specific goals.**

(Check box if these requirements are met.)

- We have determined that a specific goal is not appropriate for this project. Evaluation documentation that verifies this determination is in accordance with our Annual Plan/Goal is on file. Page No.
- Special provisions required for a project without specific goals are included in the contract documents.(indicate page number).....

**F. BUY AMERICA SPECIFICATION** (Check appropriate box and indicate page number if requirement applies.) Page No.

- Caltrans SSP 5-1. *BUY AMERICA REQUIREMENTS* (Exhibit M).....
- Equivalent provisions are included. ....
- No steel and iron products or coatings thereon, or a minimal amount as described above, will be permanently incorporated in the project. Buy America specifications are not included in contract.

**G. FEDERAL TRAINEES** (Check appropriate box and indicate page number if requirement applies).

- The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.
- Analysis of the Engineers Estimate has the dollar value under \$200,000. A Federal Trainee goal and special provisions are not required. Page No.
- Caltrans SSP - *FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS* (Exhibit N, FR-15 and FR-16) are included. (The Trainee goal is \_\_\_\_\_ .) .....
- Equivalent provisions are included (The Trainee goal is \_\_\_\_\_ .).....

**H. FEDERAL WAGE RATES** (Check appropriate box and indicate page number if Federal Wages Rates are included).

**Attachment I**

Page No.

Federal Wages Rates are physically incorporated in this contract.....\_\_\_\_\_

This project is not located on a Federal-aid Route, Federal Wage Rates are not required.

**I. RELATIONS WITH RAILROAD** (Check appropriate box and indicate page number if special provisions are included).

Page No.

The required provisions are included.....\_\_\_\_\_

This project does not involve the use of railroad properties or adjustments to railroad facilities.

**J. LOCAL AGENCY SIGNATURE**

This Federal Contract Provisions checklist has been prepared in accordance with LPP 97-03 Revised PS&E Procedures.

Signature: \_\_\_\_\_

Title : \_\_\_\_\_

Date: \_\_\_\_\_

**K. CALTRANS ACCEPTANCE:**

Check appropriate acceptance statement:

I have not personally inspected the subject project PS&E package but I am aware of the scope of the project. I have reviewed the above "REQUIRED FEDERAL CONTRACT PROVISIONS CHECKLIST" and agree it is complete and appears to have been prepared in accordance with LPP 97-03, "Revised PS&E Procedures." (This acceptance does not modify the local agency statement of compliance contained in the PS&E Certification)

I have inspected the specifications portion of the subject project PS&E package and I am aware of the scope of the project. I have reviewed the above "REQUIRED FEDERAL CONTRACT PROVISIONS CHECKLIST" and agree it is complete and has been prepared in accordance with LPP 97-03, "Revised PS&E Procedures." I have also verified that the indicated provisions are included in the specifications. (Except for this limited review, this acceptance does not modify the local agency statement of compliance contained in the PS&E Certification)

Signature: \_\_\_\_\_

Title : \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:

Original submitted to DLAE with PS&E Certification.

Original "Accepted" copy to be retained in DLAE file with PS&E Certification.

One "Accepted" copy to be returned to Local Agency

## Attachment II

# FEDERAL CONTRACT PROVISIONS CHECKLIST INSTRUCTIONS

The Federal Contract Provisions Checklist is to be completed by the Local Agency in accordance with the following instructions and attached to the PS&E Certification. These instructions supersede the instructions in Section 5 "Required Contract Provisions (Form FHWA 1273)", Section 6 "Other Required Contract Provisions", and Section 13.6 "Federal Trainee Program" of LPP 95-07, Attachment 7. The checklist also replaces the "Specifications Checklist" section on Page 4 of the PS&E Certification Letter.

## A. GENERAL FEDERAL REQUIREMENTS

General provisions must be included to reference FHWA Form 1273, Performance on Previous Contract, Noncollusion Provision, and Participation by Minority Business Enterprises In Subcontracting. Caltrans SSP - *SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS* (Exhibit 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)* (Exhibit 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 a Federal-aid Route, 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).

Note: All public roads other than those functionally classified as local roads or rural minor collectors are considered Federal-aid Routes. See Chapter 3 "Federal-Aid Routes and Functional Classifications" in the <i>Local Assistance Program Guidelines</i> .)
--

## Attachment II

### **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 a Federal-aid Route, 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, except for projects off the National Highway System (NHS). 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).

### **d. Section VII. Subletting or Assigning the Contract**

This section applies to all federal-aid projects except for projects off the NHS. 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. 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* (Exhibit C)

*Noncollusion Affidavit* (Exhibit D)

*DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit E)

*NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS* (Exhibit F)

*DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit G)

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

## **D. LIQUIDATED DAMAGES**

Provisions for liquidated damages shall be included in all federal-aid contracts. (See Section 10, "Liquidated Damages" of LPP 95-07, Attachment 7, for requirements.) Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit I, second page), or equivalent provisions shall be used.

## Attachment II

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

### **E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Fill in the required project information before completing this section.

It is the policy of the FHWA that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Individual project goals will be established based on the criteria for establishing project goals identified in the local agency's DBE Program. Complete evaluation documentation is required and shall be retained for each project. (See LPP 95-07, Attachment 4, "Disadvantaged Business Enterprise (DBE) and Attachment 7, Section 6.2 "DBE (Specification)."

In some cases a specific goal may not be appropriate due to the extremely limited opportunities for DBEs or the lack of certified DBEs in the geographic area in which work is to be performed. If this project has a specific goal, complete Section 1. If project the does not have a specific goal, complete Section 2.

#### **1. Projects with specific goals.**

For projects that contain a specific goal, the following Caltrans SSPs (and the referenced Caltrans Standard Specifications), or equivalent provisions, are required to describe DBE Program Policy, the contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting DBE participation, award documentation procedures, post award compliance procedures, and required records and reporting.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Exhibit H.) Includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and DBE Goal for project.)

Caltrans SSP *SECTION 3. SUBMISSION OF DBE INFORMATION AND AWARD AND EXECUTION OF CONTRACT* (Exhibit I)

Caltrans SSP *5-1. DBE RECORDS* (Exhibit J)

Caltrans SSP *5-1. PERFORMANCE OF DBE SUBCONTRACTORS AND SUPPLIERS* (Exhibit K)

Caltrans SSP *LOCAL AGENCY BIDDER-DBE INFORMATION* (Exhibit L)

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.

#### **2. Projects without specific goals.**

Documentation is required that verifies the local agency has determined that a specific project goal is not appropriate. Special provisions for projects without goals are also required as described in LPP 95-07, Attachment 4, Disadvantaged Business Enterprises (DBE) Program.

Check each box if these requirements are met.

## Attachment II

### F. BUY AMERICA SPECIFICATION

Current Buy America regulations require the use of domestic steel and iron products, or coatings thereon, that are permanently incorporated into the project. 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.

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

LPP 95-07 includes a general requirement for On-the-Job Training, but a specific goal was not set for the number of trainees required for each local agency project. During the construction process review, concern was raised about the effectiveness of the local OJT Program.

In California, federal "trainees" are considered registered apprentices. There are relatively few crafts in highway work which utilize apprentices -- brick layers, carpenters, cement masons, electricians, equipment operators, iron workers, pile bucks, a few others. There are no apprentice teamsters or laborers. The ratio of journeymen to apprentices is generally 5 to 1.

With these thoughts in mind, the number of trainees established for a project should be determined by examining the extent of only that work which will be done by the apprenticeable crafts. The following procedure shall be used for establishing the number of trainees for a federal-aid project:

1. If the job has less than 100 working days---no trainees.
2. Add the individual totals for the following items in the Engineer's Estimate:
  - Excavation of all kinds
  - Embankment and backfill (but not imported borrow)
  - Portland cement concrete, all classes except precast items
  - Bar reinforcing steel and prestressing steel
  - Drive piling
  - Sound walls, masonry blocks.
  - Retaining walls, bin walls, etc.
  - Concrete box culverts
  - Highway lighting
  - Signal systems, loop detectors
  - Electrical work for pumps, landscaping, etc.
  - Erect structural steel (but not "Furnish")
  - L.S. items for buildings, restrooms, etc.
3. Using the total obtained above, determine the number of trainees from the following table:

**Attachment II**

**NUMBER OF FEDERAL TRAINEES**

<b><u>\$ Value</u></b>	<b><u>No. Trainees</u></b>	<b><u>\$ Value</u></b>	<b><u>No. Trainees</u></b>
Under \$200,000	0	\$3,000,000	7
400,000	1	4,000,000	8
700,000	2	5,000,000	9
1,000,000	3	6,500,000	10
1,500,000	4	8,000,000	11
2,000,000	5	10,000,000	12
2,500,000	6		

Over \$10,000,000 add 1 trainee per  
\$5,000,000

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.

**H. FEDERAL WAGE RATES**

If payment of federal predetermined wages are required per instructions in Section B.2.a, "Section IV. Payment of Predetermined Wages," they shall be physically incorporated into the contract and in all related subcontracts

Check appropriate box (i.e., Federal Wages Rates are included or not required) and indicate page number if included.

**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. 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 Letter.

**K. CALTRANS ACCEPTANCE**

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in LPP 97-03, "Revised PS&E Procedures", and sign the bottom of the form.

If the reviewer has not inspected the project PS&E package, the acceptance is limited to agreement that the checklist is complete and appears to have been prepared in accordance with

## **Attachment II**

LPP 97-03. This acceptance does not modify the local agency statement of compliance contained in the PS&E Certification.

If the contract specifications have also been reviewed, the reviewer agrees the checklist is complete and has been prepared in accordance with LPP 97-03 and verifies that the indicated provisions are included in the specifications. Except for this limited review, the acceptance does not modify the local agency statement of compliance contained in the PS&E Certification.

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 MINORITY BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 23, 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 minority 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 MBE partner must complete Schedule A.) \_\_\_\_\_

a. Describe the role of the MBE firm in the joint venture. \_\_\_\_\_

b. Describe very briefly the experience and business qualifications of each non-MBE 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 MBE 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."

Revised 3-95  
 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)

	Page
I. General .....	3
II. Nondiscrimination .....	3
III. Nonsegregated Facilities .....	5
IV. Payment of Predetermined Minimum Wage .....	6
V. Statements and Payrolls .....	8
VI. Record of Materials, Supplies, and Labor .....	9
VII. Subletting or Assigning the Contract .....	9
VIII. Safety: Accident Prevention .....	10
IX. False Statements Concerning Highway Project.....	10
X. Implementation of Clean Air Act and Federal Water Pollution Control Act.....	10
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion .....	11
XII. Certification Regarding Use of Contract Funds for Lobbying .....	12

**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 insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with 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 23, 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 monies 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 reposable, 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 regarding 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 eligibility 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.

**FEDERAL-AID FEMALE AND MINORITY GOALS**

In accordance with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-aid Construction Contracts" the following are the goals for female utilization:

Goal for Women  
(applies nationwide).....(percent) ..... 6.9

The following are goals for minority utilization:

**CALIFORNIA ECONOMIC AREA**

	Goal (Percent)
174 Redding, CA:	
Non-SMSA Counties .....	6.8
CA Lassen; CA Modoc;	
CA Plumas; CA Shasta;	
CA Siskiyou; CA Tehama.	
175 Eureka, CA:	
Non-SMSA Counties .....	6.6
CA Del Norte; CA Humboldt;	
CA Trinity.	
176 San Francisco-Oakland-San Jose, CA:	
SMSA Counties:	
7120 Salinas-Seaside-	
Monterey, CA.....	28.9
CA Monterey.	
7360 San Francisco-Oakland, CA.....	25.6
CA Alameda; CA Contra Costa;	
CA Marin; CA San Francisco;	
CA San Mateo.	
7400 San Jose, CA.....	19.6
CA Santa Clara.	
7485 Santa Cruz, CA.....	14.9
CA Santa Cruz.	
7500 Santa Rosa, CA.....	9.1
CA Sonoma.	
8720 Vallejo-Fairfield- Napa, CA.....	17.1
CA Napa; CA Solano	
Non-SMSA Counties.....	23.2
CA Lake; CA Mendocino;	
CA San Benito.	

177 Sacramento, CA:	
SMSA Counties:	
6920 Sacramento, CA.....	16.1
CA Placer; CA Sacramento;	
CA Yolo.	
Non-SMSA Counties.....	14.3
CA Butte; CA Colusa;	
CA El Dorado; CA Glenn;	
CA Nevada; CA Sierra;	
CA Sutter; CA Yuba.	
178 Stockton-Modesto, CA:	
SMSA Counties:	
5170 Modesto, CA.....	12.3
CA Stanislaus.	
8120 Stockton, CA.....	24.3
CA San Joaquin.	
Non-SMSA Counties.....	19.8
CA Alpine; CA Amador;	
CA Calaveras; CA Mariposa;	
CA Merced; CA Tuolumne.	
179 Fresno-Bakersfield, CA:	
SMSA Counties:	
0680 Bakersfield, CA.....	19.1
CA Kern.	
2840 Fresno, CA.....	26.1
CA Fresno.	
Non-SMSA Counties.....	23.6
CA Kings; CA Madera;	
CA Tulare.	
180 Los Angeles, CA:	
SMSA Counties:	
0360 Anaheim-Santa Ana-Garden	
Grove, CA.....	11.9
CA Orange.	
4480 Los Angeles-Long	
Beach, CA.....	28.3
CA Los Angeles.	
6000 Oxnard-Simi Valley-	
Ventura, CA.....	21.5
CA Ventura.	

6780 Riverside-San Bernardino- Ontario, CA.....	19.0
CA Riverside; CA San Bernardino.	
7480 Santa Barbara-Santa Maria- Lompoc, CA.....	19.7
CA Santa Barbara.	
Non-SMSA Counties.....	24.6
CA Inyo; CA Mono; CA San Luis Obispo.	
181 San Diego, CA:	
SMSA Counties	
7320 San Diego, CA.....	16.9
CA San Diego.	
Non-SMSA Counties.....	18.2
CA Imperial.	

In addition to the reporting requirements set forth elsewhere in this contract the Contractor and subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FHWA PR-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

Form 1273 — Revised 3-95  
08-07-95

*(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.

*This page intentionally left blank*

### 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.

*This page intentionally left blank*

**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, 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 judgement 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.

*This page intentionally left blank*

## **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 subrecipients shall certify and disclose accordingly.

*This page intentionally left blank*



**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»

*This page intentionally left blank*

## 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 the proposal form and the submission of the bid.

In addition to the subcontractors required to be listed in accordance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the name and address of each DBE subcontractor to be used for credit in meeting the goals, and to whom the bidder proposes to directly subcontract portions of the work. The list of subcontractors shall also set forth the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

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

**2-1.015--FEDERAL LOBBYING RESTRICTIONS.--**Section 1352, Title 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier subrecipient 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 Proposal. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Proposal. Signing the Proposal 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.--** This project is subject to Part 23, Title 49, Code of Federal Regulations entitled "Participation By Minority Business Enterprise In Department of Transportation Programs." The Regulations in their entirety are incorporated herein by this reference.

Bidders shall be fully informed respecting the requirements of the Regulations and the Department's Disadvantaged business (DBE) program developed pursuant to the Regulations; particular attention is directed to the following matters:

- (a) A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
- (b) A DBE bidder, not bidding as a joint venture with a non-DBE, will be required to meet the DBE goal through subcontracting or material purchases or make good faith effort to do so;
- (c) A DBE may participate as a subcontractor, joint venture partner with a prime or subcontractor, or vendor of material or supplies;
- (d) A DBE joint venture partner must be responsible for specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the ownership, control, management responsibilities, risks and profits of the joint venture. The DBE joint venturer must submit the joint venture agreement, and either Schedule B of the Regulations or California Department of Transportation Business Enterprise Program form entitled "Minority/Disadvantaged/ Women Business Enterprise Joint Venture." This information must be submitted with the DBE Information form required in "DBE Information" elsewhere in these special provisions;
- (e) A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
- (f) Credit for a DBE vendor of materials or supplies is limited to 60 percent of the amount to be paid to the vendor for the material unless the vendor manufactures or substantially alters the goods;
- (g) Credit for trucking by DBEs will be as follows:
  - (i) The amount to be paid when a DBE trucker will perform the trucking with his/her own trucks, tractors and employees;
  - (ii) One hundred percent of the trucking costs will be allowed for all trucking acquired through certified DBE trucking brokers;
- (h) DBEs and DBE joint venture partners must be certified as of the date of bid opening either by the California Department of Transportation, or by a participating State of California or local agency which certifies in accordance with Title 49, Code of Federal Regulations, Part 23. Listings of DBEs certified by the Department are available from the following sources:
  - (i) The Department's DB/WBE Directory, which is published quarterly. The DB/WBE Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520;
  - (ii) The Department's Electronic Information Bulletin Board Service (DB/WBE/BBS), which is accessible by modem and is updated weekly. The DB/WBE/BBS may be accessed by first contacting the Department's Business Enterprise Program at Telephone: (916) 227-8937 and obtaining a user identification and password;
  - (iii) The organizations listed in "DBE Goal for this Project" elsewhere in these special provisions.
  - (iv) The listing of certified DBE firms is also available on the Internet at the following Internet address:  
**<http://www.dot.ca.gov/hq/bep/>**

It is the Contractor's responsibility to verify that DBEs are certified;

- (i) Noncompliance by the Contractor with the requirements of the regulations constitutes a breach of this contract and may result in termination of the contract or other appropriate remedy for a breach of this contract;
- (j) Bidders are encouraged to utilize services offered by banks owned and controlled by minorities or women.

**2-1.03 DBE GOAL FOR THIS PROJECT** - The Department has established the following goal for disadvantaged businesses (DBE) participation for this project:

Disadvantaged business (DBE) \_\_\_\_\_ percent

It is the bidder's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to assure meeting the goal for DBE participation. The Department has contracted with the following firms to assist DBEs in preparing bids for subcontracting or supplying materials:

The following firm may be contacted for projects in Districts 01, 02, 03, and 10:

NEDA - Sacramento  
1779 Tribute Road,  
Suite J,  
Sacramento, CA 95815  
Telephone: (916) 649-2568  
FAX No. (916) 649-2089

The following firm may be contacted for projects in Districts 01 and 04:

NEDA - Oakland  
1212 Broadway,  
Suite 502,  
Oakland, CA 94612  
Telephone: (510) 271-8040  
FAX No. (510) 271-8035

The following firm may be contacted for projects in Monterey and San Benito Counties in District 05, Fresno, Kings, Madera, and Tulare Counties in District 06; and in Inyo and Mono Counties in District 09:

NEDA - Fresno  
4944 E. Clinton Way,  
Suite 103,  
Fresno, CA 93727  
Telephone: (209) 252-2405  
FAX No. (209) 252-1864

The following firm may be contacted for projects in Districts 07, 08, and 12; in San Luis Obispo and Santa Barbara Counties in District 05; in Kern County in District 06; and in Kern and San Bernardino Counties in District 09:

Triaxial Management Services, Inc. - Los Angeles  
2594 Industry Way,  
Suite 101-A,  
Lynwood, CA 90262  
Telephone: (310) 537-6677  
FAX No. (310) 637-0128

The following firm may be contacted for projects in Districts 08, 11, and 12:

Triaxial Management Services, Inc. - San Diego  
2725 Congress Street,  
Suite 1D,  
San Diego, CA 92110  
Telephone: (619) 543-5109  
FAX No. (619) 543-5108

Bidders may utilize the services of these firms to contact interested DBEs.

*This page intentionally left blank*

**SECTION 3. SUBMISSION OF DBE INFORMATION AND AWARD AND EXECUTION OF CONTRACT****3-1.01 GENERAL**

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 submittal of DBE information and award and execution of contract.

The required DBE information shall be submitted on the "LOCAL AGENCY BIDDER - DBE INFORMATION" form included in the Proposal. If the DBE information is not submitted with the bid, the DBE information form shall be removed from the documents prior to submitting the bid.

It is the bidder's responsibility to meet the goal for DBE participation or to provide information to establish that, prior to bidding, the bidder made good faith efforts to do so.

**3-1.01A DBE INFORMATION**

If DBE information is not submitted with the bid, the apparent successful bidder (low bidder), the second low bidder and the third low bidder shall submit DBE information to the Department of Transportation, 1120 N Street, Room 0200, MS #26, Sacramento, California 95814 so the information is received by the Department no later than 4:00 p.m. on the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening. DBE information sent by U.S. Postal Service certified mail with return receipt and certificate of mailing and mailed on or before the third day, not including Saturdays, Sundays and legal holidays, following bid opening will be accepted even if it is received after the fourth day following bid opening. Failure to submit the required DBE information by the time specified will be grounds for finding the bid or proposal nonresponsive. Other bidders need not submit DBE information unless requested to do so by the Department. When such request is made, the DBE information of such bidders shall be submitted so the information is received by the Department no later than close of business on the third day, not including Saturdays, Sundays and legal holidays, after said notification, unless a later time is authorized by the Department.

The bidder's DBE information shall establish that the DBE goal will be met or that a good faith effort to meet the goal has been made.

Bidders are cautioned that even though their submittal indicates they will meet the stated DBE goal, their submittal should also include their good faith efforts information along with their DBE goal information to protect their eligibility for award of the contract in the event the Department, in its review, finds that the goal has not been met.

The information to show that the DBE goal will be met shall include the names of DBEs and DBE joint venture partners to be used, 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 shall be included in the DBE information, including the planned location of that work. (Note: DBE subcontractors to whom the bidder proposes to directly subcontract portions of the work are to be named in the bid. - See Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications and Section 2-1.01, "General," of these special provisions, regarding listing of proposed subcontractors.)

The information necessary to establish the bidder's good faith efforts to meet the DBE goal should include:

(1) The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for DBE participation for this project was placed by the bidder.

(2) The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.

(3) The items of work which the bidder made available to DBE firms, including, where appropriate, any breaking down of the contracts into economically feasible units to facilitate DBE participation, and the information furnished to DBEs such as plans, specifications, and requirements for the work. It is the bidder's responsibility to demonstrate that sufficient work to meet the DBE goal was made available to DBE firms.

(4) The names of DBEs who submitted bids which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the firm selected for that portion of work, and the reasons for the bidder's choice.

(5) Efforts made to assist DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance related to the plans, specifications and requirements for the work which was provided to DBEs.

(6) Any additional data to support a demonstration of good faith effort, such as contacts with DBE assistance agencies.

**3-1.01B AWARD OF CONTRACT**

Section 3-1.01, "Award of Contract," of the Standard Specifications is amended to read:

3-1.01 Award of Contract—The right is reserved to reject any and all proposals.

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. Such award, if made, will be made within 30 days after the opening of the proposals. This period will be subject to extension for such further period as may be agreed upon in writing between the Department and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

**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 date of the Notice to Proceed, and shall diligently prosecute said work to completion before the expiration of

**\_\_\_\_\_ WORKING DAYS**

The Contractor shall pay to the *State* 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 Factor (L)**

Project Estimate	Project Type		
	Resurfacing	New Align Highway	Others
Over \$5 M	3%	3%	3%
\$500K - \$5 M	3%	5%	5%
\$200K - \$500K	3%	9%	7%
Less Than \$200K	5%	9%	7%

$$\frac{L \times \text{Total Estimate}}{\text{Working Days}} = \text{Liquidated Damages } (\$250 \text{ min.})$$

**5-1. DBE RECORDS.** -- The Contractor shall maintain records of all subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor.

Upon completion of the contract, a summary of these records shall be prepared on Form CEM-2402 and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer.

*This page intentionally left blank*

**5-1. PERFORMANCE OF DBE SUBCONTRACTORS AND SUPPLIERS**

The DBEs listed by the Contractor in response to the requirements in the section of these special provisions entitled "Submission of DBE Information, Award, And Execution Of Contract", which are determined by the Department to be certified DBEs, shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

Authorization to utilize other forces or sources of materials may be requested for the following reasons:

- (1) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.
- (2) The listed DBE becomes bankrupt or insolvent.
- (3) The listed DBE fails or refuses to perform his subcontract or furnish the listed materials.
- (4) The Contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor fails or refuses to meet the bond requirements of the Contractor.
- (5) The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial accordance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.
- (6) It would be in the best interest of the State.

The Contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of the Contractor) pursuant to prior written authorization of the Engineer.

*This page intentionally left blank*

### LOCAL AGENCY BIDDER-DBE INFORMATION

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received by the administering agency no later than the time specified in the special provisions.

CO./RTE./P.M.: \_\_\_\_\_ BIDDER'S NAME: \_\_\_\_\_  
 \_\_\_\_\_  
 CONTRACT NO.: \_\_\_\_\_ ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_  
 BID AMOUNT: \_\_\_\_\_  
 \$ \_\_\_\_\_  
 BID OPENING DATE: \_\_\_\_\_ DBE GOAL FROM CONTRACT \_\_\_\_\_%

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OF WORK OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	NAME OF DBE ** (Name of DBEs, Certification Number, and Telephone Number)	DOLLAR AMOUNT *** DBE	PERCENT *** DBE
Total Claimed Participation			\$ _____ %	\$ _____ %

\* If 100% of item is not to be performed or furnished by DBE, describe exact portion, including planned location of work to be performed, of item to be performed or furnished by DBE

\*\* DBEs must be certified by Caltrans on the date bids are opened. Subcontractors and suppliers certified state-funded only cannot be used to meet goals on federally funded contracts.

\*\*\* Credit for a DBE supplier, who is not a manufacturer is limited to 60% of the amount paid to the supplier. (See Section "Disadvantaged Business" (DBE) of the special provisions)

**IMPORTANT: Names of DBE subcontractors and their respective item(s) of work listed above should be consistent with the name and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law.**

\_\_\_\_\_  
 Signature of Bidder      Date      (Area Code) tel. No.

\_\_\_\_\_  
 Person to Contact      (Please type or print)

Distribution for NHS Projects: (1) Original-Caltrans DLAE for NHS Projects, (2) Copy-Local Agency project file  
 Distribution for non-NHS Projects: (1) Original Local Agency project file

*This page intentionally left blank*

**5-1. BUY AMERICA REQUIREMENTS.** -- Attention is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), 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.

*This page intentionally left blank*

(To be used, when applicable, in Federal-aid projects)  
 \*Insert number of trainees.

## FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS

### FEDERAL REQUIREMENT TRAINING SPECIAL PROVISION. -- As part of the

Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training to develop full journeymen in the types of trades or job classification involved.

The goal for the number of trainees or apprentices to be trained under the requirements of this special provision will be \_\_\_\_\_.

In the event the Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees or apprentices are to be trained by the subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also insure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of trainees or apprentices in each occupation shall be in their first year of apprenticeship or training.

The number of trainees or apprentices shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing work, the Contractor shall submit to the Department for approval the number of trainees or apprentices to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee or apprentice employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees or apprentices as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority and women trainees or apprentices (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees or apprentices) to the extent such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee or apprentice in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by both the Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee or apprentice for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with the State of California, Department of Industrial Relations, Division of Apprenticeship Standards recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some

offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training of persons in excess of the number specified herein.

This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees or apprentices are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or apprentice or pays the trainee's or apprentice's wages during the offsite training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee or apprentice as a journeyman, is caused by the

Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee or apprentice will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he

has completed his training program. It is not required that all trainees or apprentices be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees or apprentices specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Only trainees or apprentices registered in a program approved by the State of California's State Administrator of Apprenticeship may be employed on the project and said trainees or apprentices shall be paid the standard wage specified under the regulations of the craft or trade at which they are employed.

The Contractor shall furnish the trainee or apprentice a copy of the program he will follow in providing the training. The Contractor shall provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed.

The Contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision

