



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

MAY 31, 2023
AGENDA ITEM #9

Discuss and consider approving a contract with Myers Concrete Construction, LP, for the construction of the 183 South Detention Pond Project

Strategic Plan Relevance:	Regional Mobility
Department:	Engineering
Contact:	Mike Sexton, P.E., Acting Director of Engineering
Associated Costs:	\$ 1,863,901.20
Funding Source:	183 South Project Fund
Action Requested:	Consider and act on draft resolution

Project Description/Background: The 183 South Detention Pond Project includes the construction of a retaining wall in a detention pond along the east side of the 183 South Project between Central Avenue and Bluestein Drive. The project began design in June of 2022 and was completed in January 2023.

Previous Actions & Brief History of the Program/Project: The 183 South Project improved eight miles of the existing four-lane divided roadway with signalized intersections to a six-lane tolled controlled access facility with grade separations and up to six-lane access roads. The 183 South Project was substantially completed in February 2022. The original pond design utilized the existing pond impoundment mechanism, the embankment beneath the adjacent private road, which is outside of the easement. The Mobility Authority determined a modified design removing that reliance on the private road was more feasible and developed a plan to construct a retaining wall to remove the loading from the embankment beneath the adjacent private road. Due to changes proposed by staff it was determined the timing of these improvements would require bidding the work out separately from the original 183 South project.

Construction Contract Procurement Timeline:

- April 10th, 2023: Advertised Project
- April 26th, 2023: Pre-Bid Meeting

- May 17th, 2022: Bid Opening

Bids: 2 bids were received and came in as shown below.

Contractor	Bid Price	Responsive Bid
Myers Concrete Construction, LP	\$1,863,901.20	Yes
Aaron Concrete Contractors, LLC	\$2,712,158.71	Yes

The bid has been reviewed by the Authority staff and the lowest responsive and responsible bidder is Myers Concrete Construction, LP at \$ 1,863,901.20.

The Engineer's Estimate was \$2,181,308.64.

Financing: 183S Project Fund

Action requested/Staff Recommendation: Staff recommends that the Board award the contract for the construction of the 183 South Detention Pond Project to Myers Concrete Construction, LP and authorize the Executive Director to execute a contract with Myers Concrete Construction, LP in an amount not to exceed \$ 1,863,901.20 for construction of the 183 South Detention Pond Project .

Backup provided: Draft Resolution
Draft Contract

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 23-0XX

**APPROVING A CONTRACT WITH MEYERS CONCRETE CONSTRUCTION, LP
FOR THE CONSTRUCTION OF THE 183 SOUTH DETENTION POND PROJECT**

WHEREAS, the Central Texas Regional Mobility Authority (Mobility Authority) is constructing improvements to a detention pond on the east side of US 183 located between Central Avenue and Bluestein Drive as part of the 183 South Project; and

WHEREAS, rather than relying on the existing pond impoundment mechanism, Mobility Authority engineering staff developed a plan to construct a retaining wall to remove the loading from the embankment beneath the adjacent private road (183 South Detention Pond Project); and

WHEREAS, the Mobility Authority advertised the 183 South Detention Pond Project on April 10, 2023 and received two bids by the bid opening on May 17, 2023; and

WHEREAS, the bids were reviewed by Mobility Authority engineering staff who determined the lowest responsive and responsible bidder to be Myers Concrete Construction, LP; and

WHEREAS, after reviewing the engineering staff's evaluation, the Executive Director recommends that the Board approve a contract with Myers Concrete Construction, LP for construction of the 183 South Detention Pond Project in an amount not to exceed \$1,863,901.20 and in the form published in the bid documents attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors approves a contract with Myers Concrete Construction, LP for construction of the 183 South Detention Pond Project in an amount not to exceed \$1,863,901.20 and hereby authorizes the Executive Director to finalize and execute the contract in the form or substantially the same form as published in the bid documents attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 31st day of May 2023.

Submitted and reviewed by:

Approved:

James M. Bass
Executive Director

Nikelle Meade
Vice Chair, Board of Directors

Exhibit A



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

Zen Gardens Project

CSJ: 0151-09-036

CTRMA Contract No.: 23183S22701M

Bid Documents

Addendum 1 – 05/02/2023

Advertisement: April 10, 2023

Pre-Qualification Deadline: 12:00 PM May 2, 2023

Bid Date: 2:00 PM May 17, 2023

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

BID DOCUMENTS
CONTRACT AND CONTRACT BOND
SPECIAL PROVISIONS
SPECIAL SPECIFICATIONS
PLANS

April 10, 2023

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

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CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

INVITATION TO BID

Electronic proposal forms for the above project shall be submitted via the project's CivCast <https://www.civcastusa.com/project/6414830b90f39bab01e6584b/summary> to the Central Texas Regional Mobility Authority (Authority), by **2:00 PM local time, May 17, 2023**. The bids will be publicly posted via the project's CivCast website within 48 hours after the bids are opened.

The contractor will have one hundred thirty-four (134) working days after the date stated in the written Full Notice to Proceed to achieve full completion of all work. The Authority reserves the right to make changes in the work to complete the contract, as defined in the specifications.

A Full NTP will be issued no later than 180 calendar days after award for the Contractor to begin work. Time charges will begin accruing upon issuance of the Full NTP.

The complete list of quantities is located in the Bid Form. The principal items of work are as follows:

- Retaining Wall (Cast-In-Place)
- Drainage Structure

The Official Bid Form for this Contract will be made available to prospective bidders who have met all prequalification requirements on or before 5:00 PM local time, on May 3, 2023 via the project's CivCastUSA website <https://www.civcastusa.com/project/6414830b90f39bab01e6584b/summary>.

Prequalification requirements:

- Be registered with State of Texas,
- Be fully prequalified by Texas Department of Transportation (TxDOT),
- Have a bidding capacity per TxDOT prequalification system of \$2,500,000
- Submit a valid Non-Collusion Affidavit, Debarment Affidavit, and Child Support Statement,

The deadline for meeting the prequalification requirements and still obtaining an Official Bid Form is May 2, 2023 at Noon.

The Authority cannot be held liable in the event a party is unable to submit a valid bid due to delay in the prequalification procedure. Securing prequalification through TxDOT and the timing thereof, shall at all times be the sole responsibility of the Prospective Bidder.

Complete Contract documents will be available on April 10, 2023 for potential bidders and others through the Authority's website (www.mobilityauthority.com) and CivCast's website <https://www.civcastusa.com/project/6414830b90f39bab01e6584b/summary>.

Standard Specifications (Texas Department of Transportation “Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges”, November 1, 2014) which form an integral part of this Contract, are available on line at the Texas Department of Transportation (TxDOT) website (<https://www.txdot.gov/business/resources/txdot-specifications.html>).

The contract will be awarded in accordance with the Authority’s Procurement policy. A copy of the Procurement Policy is available online at the Authority website: (<https://www.mobilityauthority.com/about/policy-disclaimers/code>).

For more information, please submit a question to the project team through CivCast.com.

Each bid must be accompanied by a Bid Guaranty consisting of a Bid Bond (on the form provided) in the amount of at least five percent (5%) of the Total Bid Amount. The apparent low bidder shall deliver the original sealed Bid Bond to CTRMA within five (5) calendar days of such notification.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
James Bass, Executive Director
Austin, Texas

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

BID DOCUMENT CHECKLIST

Prior to submitting a bid, prospective bidders should review the checklist below to ensure that the bid is accepted and not declared nonresponsive. No joint venture participants will be allowed.

Bid Document:

- Are you aware if your affiliates are bidding on the same project?
- Are you pre-qualified by TxDOT through the Confidential Questionnaire process and have a bidding capacity of \$2,500,000.
- Have you submitted a valid Non-Collusion Affidavit, Debarment Affidavit, and Child Support Statement in order to receive an Official Bid Form?

Bid Document Preparation:

- Is the bid being submitted on the Official Bid Form via the CivCast website?
- Are you submitting only one bid for this project?
- Is the bid signed by your company representative or each joint venture participant?
- Have you entered prices for all bid items?
- Does the bid document contain all items included in the Official Bid Form?
- Does the bid document contain a total bid value?
- Is the bid free of any additional conditions not included in the bid document provided to you?
- Have you electronically submitted a complete and executed Bid Bond?
- Have you acknowledged each Addendum on CivCast?

Bid Bonds:

- Is the bid bond signed by the surety?
- Is the bid bond signed by the company representative?
- Is the exact name of the contractor(s) listed as the principal?
- Is the impressed surety seal affixed to the bid bond?
- Does the name on the surety seal match the name of the surety on the bond?
- Is the bond dated on or earlier than the letting date of the project?
- Is the signer for the surety listed on the power of attorney attached to the bond?
- Is the surety authorized to issue the bond?

Bid Document Submission:

- Are you aware of the time and date deadline for submission for the bid document?
- Are you submitting a complete bid document?

Zen Gardens Project Unofficial Bid Form

To receive Official Bid Form, request via the project's CivCast website.



ITEM NO.	DESC. CODE	DESCRIPTION	UNIT	QTY	UNIT PRICE
0100	6002	PREPARING ROW	STA	6.00	
0104	6028	REMOVING CONC (MISC)	SY	28.00	
0110	6003	EXCAVATION (SPECIAL)	CY	3583.00	
0132	6003	EMBANKMENT (FINAL)(ORD COMP)(TY B)	CY	1047.00	
0162	6002	BLOCK SODDING	SY	1399.00	
0162	6004	MULCH SODDING	SY	18005.00	
0192	6023	PLANT MATERIAL (15 GAL)(TREE)	EA	142.00	
0400	6001	STRUCT EXCAV	CY	13.00	
0400	6005	CEM STABIL BKFL	CY	28.00	
0401	6001	FLOWABLE BACKFILL	CY	30.00	
0402	6001	TRENCH EXCAVATION PROTECTION	LF	41.00	
0420	6002	CL A CONC (MISC)	CY	23.00	
0420	6074	CL C CONC (MISC)	CY	19.20	
0423	6008	RETAINING WALL (CAST - IN - PLACE)	SF	8814.67	
0432	6010	RIPRAP (CONC)(CL B)(5 IN)	CY	52.00	
0432	6031	RIPRAP (STONE PROTECTION)(12 IN)	CY	34.00	
0432	6046	RIPRAP (MOW STRIP)(5 IN)	CY	24.90	
0459	6001	GABIONS (GALV)	CY	6.00	
0464	6005	RC PIPE (CL III)(24 IN)	LF	4.00	
0464	6010	RC PIPE (CL III)(48 IN)	LF	41.00	
0464	6012	RC PIPE (CL III)(60 IN)	LF	8.00	
0467	6005	SET (TY I) (24 IN) (3: 1) (C)	EA	1.00	
0496	6004	REMOV STR (SET)	EA	1.00	
0496	6005	REMOV STR (WINGWALL)	EA	1.00	
0496	6007	REMOV STR (PIPE)	LF	53.00	
0496	6023	REMOVE STR (JUNCTION BOX)	EA	1.00	
0496	6072	REMOVING ROCK RIPRAP	LF	125.00	
0500	6001	MOBILIZATION	LS	1.00	
0502	6001	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	9.00	
0506	6002	ROCK FILTER DAMS (INSTALL) (TY 2)	LF	101.00	
0506	6011	ROCK FILTER DAMS (REMOVE)	LF	101.00	
0506	6020	CONSTRUCTION EXITS (INSTALL) (TY 1)	SY	111.00	
0506	6024	CONSTRUCTION EXITS (REMOVE)	SY	111.00	
0506	6038	TEMP SEDMT CONT FENCE (INSTALL)	LF	700.00	
0506	6039	TEMP SEDMT CONT FENCE (REMOVE)	LF	700.00	
0506	6043	BIODEG EROSN CONT LOGS (REMOVE)	LF	40.00	
0506	6045	BIODEG EROSN CONT LOGS (INSTL) (6")	LF	40.00	
		CONTIGENCY ALLOWANCE	LS	1.00	\$150,000
		FORCE ACCOUNT	LS	1.00	\$20,000

(NOTE: Bidders shall **not** remove this bidding form from attached documents.)

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

ZEN GARDENS PROJECT CONTRACT

To the Central Texas Regional Authority
3300 N I-35, Suite 300
Austin, Texas 78705

Gentlemen:

I/we, the undersigned, declare: that no other person, firm or corporation is interested in this Bid; that I/we have carefully examined the Plans, Standard Specifications, Special Provisions, and all other documents pertaining to this Contract which form a part of this Bid as if set forth at length herein; that I/we understand that the quantities of items shown herein below are approximate only; that I/we have examined the location of the proposed work; that I/we agree to bind myself/ourselves, upon award to me/us by the Central Texas Regional Authority under this Bid, to enter into and execute a Contract, for the project named above; that I/we agree to start work within thirty (30) calendar days after the date stated in the written Notice-to-Proceed (Item 8.1 of the Specifications), to furnish all necessary materials, provide all necessary labor, equipment, tools and plant, pay for all required insurance, bonds, permits, fees and service, and do all required work in strict compliance with the terms of all documents comprising said Contract, and to fully complete the entire project within one hundred thirty-four (134) working days after Notice-to-Proceed; and that I/we agree to accept as full compensation for the satisfactory prosecution of this project the contractual bid amount after it is adjusted based on the terms and conditions specified in the contract.

The quantities shown in the above schedule of items are considered to be approximate only and are given as the basis for comparison of bids. The Authority may increase or decrease the amount of any item or portion of the work as may be deemed necessary or expedient. Any increase or decrease in the amount of any item or portion of work will be added or deducted from the total Contract bid price based on the terms and conditions specified in TxDOT Specification Item 4. It is understood that payment for this project will be by unit prices bid.

The cost of any work performed, materials furnished, services provided, or expenses incurred, whether or not specifically delineated in the Contract documents but which are incidental to the scope and plans, intent, and completion of this Contract, have been included in the price bid for the various items scheduled hereinabove.

Accompanying this Bid is a bid guaranty consisting of a Bid Bond (on the form provided) in the amount of at least five percent (5%) of the Official Total Bid Amount. It is hereby understood and agreed that said Bid Bond is to be forfeited as liquidated damages in the event that, on the basis of this Bid, the Authority should award this Contract to me/us and that I/we should fail to execute and deliver said Contract and the prescribed Contract Bond, together with the proof of proper insurance coverage and other necessary documents, all within fifteen (15) calendar days after award of the Contract; otherwise, said check or bond is to be returned to the undersigned.

Business Name of Bidder _____

Type of Organization Individual
 Partnership
 Corporation

Address of Bidder: _____

Signature of Owner,
Partner or Corp. Officer: _____

Title: _____

Date: _____

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

NON-COLLUSION AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

I, _____, of the
City of _____, County of _____ and State of
_____, being of full age and duly sworn according to law on my oath
depose and say:

That I am _____ (Title) of
_____, the Bidder making
the Bid submitted to the Central Texas Regional Mobility Authority, on the 17th day of May,
2023, for Contract No. 23183S22701M in connection with the Zen Gardens Project; that I
executed the said Bid with full authority to do so;

The said Bidder has not, directly or indirectly, entered into any combination or
arrangement with any person, firm or corporation or entered into any agreement, participated in
any collusion, or otherwise taken any action in restraint of free, competitive bidding or which
would increase the cost of construction or maintenance in connection with the said Contract; that
no person or selling agency has been employed or retained to solicit or secure the said Contract
upon an agreement or understanding for a commission, percentage, brokerage or contingent fee,
except bona fide full-time employees;

And that said Bidder is or has been a member of the following highway contractors' association during the preceding twelve months:

Name of Association	Location of Principal Office
_____	_____
_____	_____
_____	_____

I further warrant that all statements contained in said Bid and in this Affidavit are true and correct and made with full knowledge that the said Authority relies upon the truth of the statements contained in said Bid and in this Affidavit in awarding the said Contract.

Sworn to and subscribed
before me this _____
day of _____,
20__.

By: _____
Person Signing Bid

Print Name: _____
Title: _____

Notary Public

My commission expires: _____

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

DEBARMENT AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

I, _____, of the City
of _____, County of _____ and State of
_____, being of full age and duly sworn according to law on my oath
depose and say:

That I am _____ (Title) of
_____, the Bidder making
the Bid submitted to the Central Texas Regional Mobility Authority, on the 17th day of May, 2023,
for Contract No. 23183S22701M in connection with the Zen Gardens Project; that I executed the
said Bid with full authority to do so;

The said Bidder has not been excluded or disqualified from doing business on State or
Federal projects;

And that said Bidder is or has been a member of the following highway contractors'
association during the preceding twelve months:

Name of Association	Location of Principal Office
_____	_____
_____	_____
_____	_____

I further warrant that all statements contained in said Bid and in this Affidavit are true and correct and made with full knowledge that the said Authority relies upon the truth of the statements contained in said Bid and in this Affidavit in awarding the said Contract.

Sworn to and subscribed
before me this _____
day of _____,
20__.

By: _____
Person Signing Bid

Print Name: _____
Title: _____

Notary Public

My commission expires: _____

CHILD SUPPORT STATEMENT

Under section 231.006, Family Code, the vendor or applicant certifies that the individual or business entities named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.



CHILD SUPPORT STATEMENT FOR NEGOTIATED CONTRACTS AND GRANTS

Under Family Code, Section 231.006, _____
 Certifies that _____,
 as of _____ is eligible to receive a grant, loan or payment and acknowledges
 that any contract may be terminated and payment may be withheld if this certification is inaccurate.

List below the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the bid or application. This form must be updated whenever any party obtains a 25% ownership interest in the business entity.

NAME <i>(please print legibly, if handwritten)</i>	SOCIAL SECURITY NUMBER

Family Code, Section 231.006, specifies that a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided in Family Code, Section 231.302(d), a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Subchapters A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq.)

CERTIFICATION TO NOT BOYCOTT ISRAEL

Pursuant to Texas Government Code 2271.002, the Mobility Authority must include a provision requiring a written verification that the Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. By signing the contract, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

Violation of this certification may result in action by the Mobility Authority.

**CERTIFICATION TO NOT DISCRIMINATE AGAINST
FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS**

Pursuant to Texas Government Code 2274.002, the Department must include a provision requiring a written verification affirming that the Contractor:

- 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Government Code 2274.001, and
- 2) will not discriminate against a firearm entity or firearm trade association during the term of the contract.

This provision applies to a contract that:

- 1) is with a Contractor that is not a sole proprietorship,
- 2) is with a Contractor with 10 or more full-time employees, and
- 3) has a value of \$100,000 or more.

By signing, the Contractor certifies that it does not discriminate against a firearm entity or firearm trade association as described and will not do so during the term of this contract.

"Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to: (1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. "Discriminate against a firearm entity or firearm trade association" does not include: (1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Violation of this certification may result in action by the Department.

CERTIFICATION TO NOT BOYCOTT ENERGY COMPANIES

Pursuant to Texas Government Code 2274.002, the Department must include a provision requiring a written verification affirming that the Contractor does not boycott energy companies, as defined in Government Code 809.001, and will not boycott energy companies during the term of the contract. This provision applies to a contract that:

- 1) is with a Contractor that is not a sole proprietorship,
- 2) is with a Contractor with 10 or more full-time employees, and
- 3) has a value of \$100,000 or more.

By signing, the Contractor certifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract. "Boycott" means taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (1) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (2) does business with a company described by (1).

Violation of this certification may result in action by the Department.

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

BID BOND

KNOW ALL PERSONS MEN BY THESE PRESENTS,
that _____, as Principal/Contractor, and
_____, as Surety, legally authorized to do
business in the State of Texas, are held and firmly bounded unto the Central Texas Regional
Mobility Authority, as Authority, in the amount of at least five percent (5%) percent of the Total
Bid amount, on which the Contract is awarded lawful money of the United States of America, for
the payment of which, well and truly to be made, we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally and firmly by these presents:

WHEREAS, the Contractor is herewith submitting its Bid for Contract No.
23183S22701M, entitled Zen Gardens Project, and

NOW, THEREFORE, the condition of this obligation is such, that if the Contractor shall be
awarded the Contract upon said Bid and shall, within fifteen (15) calendar days after the date of
written notice of such award, enter into and deliver a signed Contract and the prescribed
Performance Bond for the faithful performance of the Contract, together with the required proof of
proper insurance coverage and other necessary documents, then this obligation shall be null and
void; otherwise, to remain in full force and effect, and the Contractor and Surety will pay unto the
Authority the difference in money between the amount of the Total Amount written in the Bid of
said Contractor and the amount for which the Authority may legally contract with another party to
perform the said work, if the latter amount be in excess of the former; but in no event shall the
Surety's liability exceed the penal sum hereof.

SIGNED AND SEALED this _____ day of _____, 20____.

PRINCIPAL/CONTRACTOR

Business Name

Address

Witness or Attest:

By: _____

Title:

(Affix Corporate Seal Here)

SURETY:

Business Name

Address

Witness or Attest:

By: _____

Title:

(Attach evidence of Power of Attorney)

(Affix Corporate Seal Here)

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

CONTRACT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 20__, between the Central Texas Regional Mobility Authority, 3300 N. I-35, Suite 300, Austin, Texas, 78705, hereinafter called the "Authority" and _____, or his, its or their successors, executors, administrators and assigns, hereinafter called the Contractor.

WITNESSETH, that the Contractor agrees with the Authority for the consideration herein mentioned, and at his, its or their own proper cost and expense, to do all the work and furnish all the materials, equipment, teams and labor necessary to prosecute and complete and to extinguish all liens therefore, Contract No. 23183S22701M, entitled Zen Gardens Project, in the manner and to the full extent as set forth in the Plans, Standard Specifications, Special Provisions, Bid (for the basis of award stated herein below) and other documents related to said Contract which are on file at the office of the Authority and which are hereby adopted and made part of this Agreement as completely as if incorporated herein, and to the satisfaction of the Authority or its duly authorized representative who shall have at all times full opportunity to inspect the materials to be furnished and the work to be done under this Agreement.

This Contract is awarded on the basis of the official total Bid Amount based on the unit prices bid of _____ dollars and _____ Cents (\$ _____).

In consideration of the foregoing premise, the Authority agrees to pay the Contractor for all items of work performed and materials furnished at the amount of the unit prices bid therefore in the Bid submitted for this Contract, subject to any percentage reductions in the total Contract amount that may be named in the Bid corresponding to the basis of award stated in the above paragraph, and subject to the conditions set forth in the Specifications.

The Contractor agrees as follows:

- a. I/WE will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor.

- b. I/WE agree it is the policy of the Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color or national origin, age or disability. Such action shall include: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and on-the-job training.
- c. I/WE agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- d. I/WE in any solicitations or advertising for employees placed by or on behalf of itself, will state that it is an equal opportunity employer.
- e. I/WE agree to adhere to all federal/state regulations including, but not limited to, American Disabilities Act, Equal Employment Opportunity, submitting certified payrolls, and participating in Contractor/Subcontractor labor standard reviews.
- f. Notices and advertisements and solicitations placed in accordance with applicable state and federal law, rule or regulation, shall be deemed sufficient for the purposes of meeting the requirements of this section.
- g. Contract Time - The contractor will have one hundred thirty-four (134) working days after the date stated in the written Full Notice-to-Proceed to Fully complete the project.
- h. Failure by Contractor to fulfill these requirements is a material breach of the Contract, which may result in the termination of this Contract, or such other remedy, as the Authority deems appropriate.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year written above.

Sworn to and Subscribed

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

before me this _____
day of _____, 20__.

By: _____

James Bass
Executive Director

Notary Public

My commission expires:

CONTRACTOR:

Business Name

Address

Sworn to and subscribed
before me this _____
day of _____, 20____.

by: _____
Notary Public

Title

My commission expires:

(Affix Corporate Seal Here)

INFORMATION ABOUT PROPOSER ORGANIZATION

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Providence) (ZIP or Postal Code) (Country)

State or County of Incorporation/Formation/Organization: _____

Signature block for a corporation or limited liability company:

Company: _____

By: _____

Printed Name: _____

Title: _____

Additional Requirements:

- A. If the proposer is a corporation, enter state or country of incorporation in addition to the business address. If the proposer is a partnership, enter state or country of formation. If the proposer is a limited liability company, enter state or country of organization.
- B. Describe in detail the legal structure of the entity making the Bid. If the proposer is a partnership, attach full name and addresses of all partners and the equity ownership interest of each entity, provide the aforementioned incorporation, formation and organization information for each general partner and attach a letter from each general partner stating that the respective partner agrees to be held jointly and severally liable for any and all of the duties and obligations of the proposer under the Bid and under any contract arising therefrom. If the proposer is a limited liability entity, attach full names and addresses of all equity holders and other financially responsible entities and the equity ownership interest of each entity. If the proposer is a limited liability company, include an incumbency certificate executed by a Secretary thereof in the form set on the following page listing each officer with signing authority and its corresponding office. Attach evidence to the Bid and to each letter that the person signing has authority to do so.
- C. With respect to authorization of execution and delivery of the Bid and the Agreements and validity thereof, if any signature is provided pursuant to a power of attorney, a copy of the power of attorney shall be provided as well as a certified copy of corporate or other appropriate resolutions authorizing said power of attorney. If the Proposer is a corporation, it shall provide evidence of corporate authorization in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a limited liability company, evidence of authorization would be in the form of a limited company resolution and a managing member resolution providing such authorization, certified by an appropriate officer of the managing member. If the Proposer is a partnership, evidence of authorization shall be provided for the governing body of the Proposer and for the governing bodies of each of its general partners, at all tiers, and in all cases certified by an appropriate officer.
- D. The Proposer must also identify those persons authorized to enter discussions on its behalf with the Authority in connection with this Bid, the Project, and The Agreement. The Proposer shall submit with its Bid a power of attorney executed by the Proposer and each member, partner of the Proposer, appointing and designating one or more individuals to act for and bind the Proposer in all matters relating to the Bid.

INCUMBENCY CERTIFICATE

The undersigned hereby certifies to the Central Texas Regional Mobility Authority that he/she is the duly elected and acting _____ Secretary of _____ (the "Company"), and that, as such, he/she is authorized to execute this Incumbency Certificate on behalf of the Company, and further certifies that the persons named below are duly elected, qualified and acting officers of the Company, holding on the date hereof the offices set forth opposite their names.

NAME:

OFFICE:

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate this _____ day of _____.

Secretary

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____

_____ of the City of _____

County of _____, and State of _____, as principal,
and

_____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the Central Texas Regional Mobility Authority (Authority), in the penal sum of

_____ Dollars

(\$ _____) for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Authority, dated the _____ day of _____, 20__ (the "Contract"), to which the said Contract, along with the Contract Documents referenced therein are hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by the Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Contract Documents hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work performed thereunder, or to the Contract Documents referenced therein, shall in anyway affect the obligations on this bond, and it does hereby waive notice of such change, extension of time, alteration or addition to the terms on the Agreement, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20__.

PRINCIPAL

SURETY

SIGNATURE

SIGNATURE

NAME & TITLE

NAME & TITLE

ADDRESS

ADDRESS

(_____) _____
PHONE NUMBER

(_____) _____
PHONE NUMBER

The name and address of the Resident Agency of Surety is:

(_____) _____
PHONE NUMBER

SIGNATURE OF LICENSED LOCAL
RECORDING AGENT appointed to countersign
on behalf of Surety (Required by Art. 21.09 of the
Insurance Code)

I, _____, having executed Bonds
SIGNATURE

for _____ do hereby affirm I have
NAME OF SURETY

verified that said Surety is now certified with Authority from either: (a) the Secretary of the Treasury of the United States if the project funding includes Federal monies; or (b) the State of Texas if none of the project funding is from Federal sources; and further, said Surety is in no way limited or restricted from furnishing Bond in the State of Texas for the amount and under conditions stated herein.

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____

_____ of the City of _____

County of _____, and State of _____, as Principal
(hereinafter referred to as the "Principal"), and

_____ authorized under the laws of the State of Texas to act as Surety on bonds for principals (hereinafter referred to as the "Surety"), are held and firmly bound unto Central Texas Regional Mobility Authority, (hereinafter referred to as the "Authority"), in the penal sum of

_____ Dollars

(\$_____) for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Authority, dated the _____ day of _____, 20__ (the "Contract"), to which the said Contract, along with the Contract Documents referenced therein are hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed thereunder, or to the other Contract Documents accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of such change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder or to the other Contract Documents accompanying the same.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20__.

PRINCIPAL

SURETY

SIGNATURE

SIGNATURE

NAME & TITLE

NAME & TITLE

ADDRESS

ADDRESS

(_____) _____
PHONE NUMBER

(_____) _____
PHONE NUMBER

The name and address of the Resident Agency of Surety is:

(_____) _____
PHONE NUMBER

SIGNATURE OF LICENSED LOCAL
RECORDING AGENT appointed to countersign
on behalf of Surety (Required by Art. 21.09 of the
Insurance Code)

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

RECEIPT OF ADDENDA

Receipt of addendum, if issued, must be acknowledged electronically on the CivCast website.

Failure to confirm receipt of all addenda issued will result in the bid being deemed non-responsive.

Signature

Date

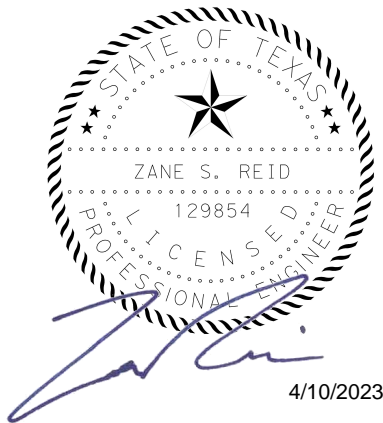
Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

ENGINEER'S SEALS

The enclosed Specifications, Special Provisions, General Notes, and Specification Data in this document have been selected by me, or under my responsible supervision as being applicable to this project.



PREPARED BY:
ATKINS
11801 Domain Blvd., Suite 500
Austin, Texas, 78758
512-327-6840 PH
512-327-2453 FX
TBPE REG. #F-474

Alteration of a sealed document without proper notification to the responsible engineer is an offence under the Texas Engineering Practice Act.

GENERAL NOTES:

Basis of Estimate		
Item	Description	**Rate
168	Vegetative Watering Permanent Seed or Sod Temporary	20 GAL/SY 10 GAL/SY
**204	Sprinkling (Dust) (Item 132) (Item 247)	30 GAL/CY 30 GAL/CY 30 GAL/CY
**210	Rolling (Flat Wheel) (Item 247) (Item 316)	1 HR/200 TON 1 HR/6000 SY

** For Informational Purposes Only

GENERAL

The "Engineer" shall be the Central Texas Regional Mobility Authority's (Mobility Authority) consultant identified by the Mobility Authority at the Pre-Construction Meeting.

References to manufacturer's trade name or catalog numbers are for the purpose of identification only. Similar materials from other manufacturers are permitted if they are of equal quality, comply with the specifications for this project, and are approved by the Mobility Authority.

Perform work during good weather. If work is damaged by a weather event, the Contractor is responsible for all costs associated with replacing damaged work.

If work is performed at Contractor's option, when inclement weather is impending, and the work is damaged by subsequent precipitation, the Contractor is responsible for all costs associated with replacing the work, if required.

Remove and replace, at the Contractor's expense, and as directed, all defective work, which was caused by the Contractor's workforce, materials, or equipment.

Equip all construction equipment used in roadway work with highly visible omnidirectional flashing warning lights.

Contractor is responsible for verifying the location of all utilities (overhead and underground) and notifying the Engineer of any discrepancies before beginning construction. Contractor shall contact utility companies 48 hours prior to construction and take "caution" in areas where utilities are close together to avoid damaging the utilities.

Both TxDOT owned and CTRMA owned Intelligent Transportation Systems (ITS) Infrastructure may exist within the limits of this project and the system must remain operational throughout construction. The exact location of ITS Infrastructure is not known. Backbone and hub communication fiber links are critical and must be maintained during the duration of the project. Proposed and temporary ITS and toll systems shall operate as a coherent system. Short

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periods for switchovers must be scheduled with TxDOT and the Mobility Authority and should occur at night. Power and communications to ITS and toll devices must be maintained. Changeovers for both temporary and permanent ITS must be scheduled with TxDOT and the Mobility Authority and provide 30 days advance written notice prior to modifying the ITS or toll system.

Use caution if working in these areas to avoid damaging or interfering with existing facilities and infrastructure. Repair any damage to the ITS, toll system, and infrastructure within 8 hours of occurrence at no cost to TxDOT/Mobility Authority. In the event of TxDOT system damage, notify TxDOT at (512) 974-0883 and the Toll Operations Division at (512) 874-9177 within one hour of occurrence. In the event of Mobility Authority system damage, notify the Mobility Authority Director of Operations at (512) 996-9778 within one hour of occurrence. Failure of the Contractor to repair damage within 8 hours of occurrence to any infrastructure that conveys any corridor information to TxDOT/Mobility Authority will result in the Contractor being billed for the full cost of emergency repairs performed by others. Upon completion of installation of permanent fiber optic duct bank and cable and switchover from temporary to permanent has been made, remove all temporary optic cable, timber poles, messenger cable and ground boxes. Temporary conduit to existing ground boxes shall be separated from existing ground boxes and access port to ground box shall be repaired. Provide notification to TxDOT and the Mobility Authority 48 hours in advance of changeovers for both temporary and permanent ITS and provide anticipated duration of down time.

Construct all manholes/valves to final pavement elevations prior to the placement of final surface. If the manholes/valves are going to be exposed to traffic, place temporary asphalt around the manhole/valve to provide a 50:1 taper. The asphalt taper is subsidiary to the ACP work.

Supply litter barrels in enough numbers at locations as directed to control litter within the project. Consider subsidiary to pertinent items.

Use a self-contained vacuum broom to sweep the roadway and keep it free of sediment as directed. The contractor will be responsible for any sweeping above and beyond the normal maintenance required to keep fugitive sediment off the roadway as directed by the Engineer.

Sweep and keep the shared use path free of sediment weekly and as directed by the engineer. Considered subsidiary to the pertinent items.

Prior to beginning work, thoroughly document the existing conditions by conducting a detailed video survey of the pond slopes, outlet structures, headwalls, embankment, pipes, safety end treatments, and surrounding areas. Considered subsidiary to pertinent items.

Damage to existing pipes and SET's due to Contractor operations will be repaired at Contractor's expense.

Damage to existing sidewalk and/or shared use path shall be repaired at the contractor's expense.

All locations used for storing construction equipment, materials, and stockpiles of any type, within the right of way, will be as directed. Use of right of way for these purposes will be restricted to those locations where driver sight distance to businesses and side street intersections is not obstructed and at other locations where an unsightly appearance will not

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exist. The Contractor will not have exclusive use of right of way but will cooperate in the use of the right of way with the city/county and various public utility companies as required.

Protect all areas of the right of way (ROW) that are not included in the actual limits of proposed construction areas. Exercise care to prevent damage of trees, vegetation and other natural surroundings. Areas not to be disturbed will be as directed by the Engineer. Restore any area disturbed by the Contractor's operations to a condition as good as, or better than, before the beginning of work.

During evacuation periods for Hurricane events the Contractor will cooperate with the Mobility Authority and TxDOT for the restricting of Lane Closures and arranging for Traffic Control to facilitate Coastal Evacuation Efforts.

Contractor is responsible for all toll charges incurred by Contractor vehicles.

Coordinate and obtain approval for all work over existing roadways.

ITEM 4 – SCOPE OF WORK

Final clean up will include the removal of excess material considered detrimental to vegetation growth along the front slope of the ditch. Materials, as specified by the Engineer, will be removed at the Contractor's expense.

ITEM 5 – CONTROL OF THE WORK

Provide a 72-hour advance email notice to [AUS Locate@txdot.gov](mailto:AUS_Locate@txdot.gov) to request illumination, traffic signal, ITS, or toll equipment utility locates on TxDOT's system. Provide a 2-week advance notice to the Engineer to request locates of CTRMA operated illumination, traffic signal, ITS or toll equipment and utilities.

If this Agreement authorizes the Authority or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on TxDOT right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

Electronic Shop Drawing Submittals:

Submit electronic shop drawing submittals using the Mobility Authority's Electronic Data Management System (EDMS), which will be established for the Project prior to commencing construction. Submittals will be addressed to the Construction, Engineering and Inspections (CE&I) Firm's Resident Engineer (RE) and additional staff, as appropriate.

ITEM 6 - CONTROL OF MATERIALS

Give a minimum of 5 business days' notice for materials, which require inspection at the Plant.

For structures with paint containing hazardous materials, provide locations of paint removal 60 days prior to begin removal.

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ITEM 7 – LEGAL RELATIONS AND RESPONSIBILITIES

Refer to the Environmental Permits, Issues and Commitments (EPIC) plan sheets for additional requirements and permits.

When any abandoned well is encountered, cease construction operations in this area and notify the Engineer who will coordinate the proper plugging procedures. A water well driller licensed in the State of Texas must be used to plug a well.

Erosion control and stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Track all exposed soil, stockpiles, and slopes. Tracking consists of operating a tracked vehicle or equipment up and down the slope, leaving track marks perpendicular to the direction of the slope. Re-track slopes and stockpiles after each rain event or every 14 days, whichever occurs first. This work is subsidiary.

Do not park equipment where driver sight distance to businesses and side street intersections is obstructed, especially after work hours. If it is necessary to park where drivers' views are blocked, make every effort to flag traffic accordingly. Give the traveling public first priority.

Perform maintenance of vehicles or equipment at designated maintenance sites. Keep a spill kit on-site during fueling and maintenance. This work is subsidiary.

Maintain positive drainage for permanent and temporary work for the duration of the project. Be responsible for any items associated with the temporary or interim drainage and all related maintenance. This work is subsidiary.

Collect wastewater generated on-site by chemical toilets and transport off the recharge zone and dispose of properly.

Suspend all activities near any significant recharge features, such as sinkholes, caves, or any other subterranean openings that are discovered during construction or core sampling. Do not proceed until the designated Geologist or TCEQ representative is present to evaluate and approve remedial action.

Locate aboveground storage tanks kept on-site for construction purposes in a contained area as to not allow any exposure to soils. The containment will be sized to capture 150% of the total capacity of the storage tanks.

For projects with PSLs in Edwards Aquifer Recharge/Contributing Zone or in USACE Jurisdictional Area:

Project Specific Location (PSL) in Edwards Aquifer Recharge and Contributing Zone

Obtain written approval from the Engineer for all on or off right of way PSLs not specifically addressed in the plans. Provide a signed SW3P sketch of the location 30 business days prior to use of the PSL. Include a list of materials, equipment and portable facilities that will be stored at the PSL.

PSL in USACE Jurisdictional Area

Do not initiate activities in a PSL associated with a U.S. Army Corps of Engineers (USACE) jurisdictional area that have not been previously evaluated by the USACE as part of the permit review of this project. Such activities include, but are not limited to, haul roads, equipment

staging areas, borrow and disposal sites. Associated defined here means materials are delivered to or from the PSL. The jurisdictional area includes all waters of the U.S. including wetlands or associated wetlands affected by activities associated with this project. Special restrictions may be required for such work. Consult with the USACE regarding activities, including PSLs that have not been previously evaluated by the USACE. Provide the Department with a copy of all USACE coordination and approvals before initiating activities.

Proceed with activities in PSLs that do not affect a USACE jurisdictional area if self-determination has been made that the PSL is non-jurisdictional or proper clearances have been obtained in USACE jurisdictional areas or have been previously evaluated by the USACE as part of the permit review of this project. Document any determinations that PSL activities do not affect a USACE jurisdictional area. Maintain copies of PSL determinations for review by the Department or any regulatory agency. The Contractor must document and coordinate with the USACE, if required, before any excavation material hauled from or embankment material hauled into a USACE jurisdictional area by either (1) or (2) below.

1. **Restricted Use of Materials for the Previously Evaluated Permit Areas.** When an area within the project limits has been evaluated by the USACE as part of the permit process for this project:
 - a. suitable excavation of required material in the areas shown on the plans and cross sections as specified in Standard Specification Item 110, Excavation is used for permanent or temporary fill within a USACE jurisdictional area;
 - b. suitable embankment from within the USACE jurisdictional area is used as fill within a USACE evaluated area;
 - c. Unsuitable excavation or excess excavation that is disposed of at an approved location within a USACE evaluated area.
2. **Contractor Materials from Areas Other than Previously Evaluated Areas.** Provide the Department with a copy of all USACE coordination and approvals before initiating any activities in a jurisdictional area within the project limits that has not been evaluated by the USACE or for any off right of way locations used for the following, but not limited to, haul roads, equipment staging areas, borrow and disposal sites:
 - a. Standard Specification Item 132, Embankment is used for temporary or permanent fill within a USACE jurisdictional area;
 - b. Unsuitable excavation or excess excavation that is disposed of outside a USACE evaluated area.

Work over or near Bodies of Water (Lakes, Rivers, Ponds, Creeks, etc.).

Keep on site a universal spill kit adequate for the body of water and the work being performed. No debris is allowed to fall into a body of water. Debris that falls into the water must be removed at the end of each work day. Debris that falls into the floodway must be removed at the end of each work week or prior to a rain event. This work is subsidiary.

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DSHS Asbestos and Demolition Notification.

Complete and provide the Texas Department of State Health Services (DSHS) notification form to the Engineer at least 30 calendar days prior to bridge or bridge class culvert removal or renovation. Notify the Engineer via email of any changes to the work start and end dates.

Migratory Birds and Bats.

Migratory birds and bats may be nesting within the project limits and concentrated on roadway structures such as bridges and culverts. Remove all old and unoccupied migratory bird nests from any structures, trees, etc. between September 16 and February 28. Prevent migratory birds from re-nesting between March 1 and September 15. All methods used for the removal of old nesting areas and the prevention of re-nesting must be submitted to the Mobility Authority 30 business days prior to begin work. This work is subsidiary.

If active nests are encountered on-site during construction, all construction activity within 50 ft. of the nest must cease immediately. Contact the Engineer to determine how to proceed.

No extension of time or compensation payment will be granted for a delay or suspension of work caused by migratory birds or bats. This work is subsidiary.

Law Enforcement Personnel.

Submit charge summary and invoices using Mobility Authority-provided forms.

Patrol vehicles must be clearly marked to correspond with the officer's agency and equipped with appropriate lights to identify them as law enforcement. For patrol vehicles not owned by a law enforcement agency, markings will be retroreflective and legible from 100 ft. from both sides and the rear of the vehicle. Lights will be high intensity and visible from all angles.

No payment will be made for law enforcement personnel needed for moving equipment or payment for drive time to/from the event site.

If the Contractor has a field office, provide an office location for a supervisory officer when event requires a supervising officer. This work is subsidiary.

A maximum combined rate of \$70 per hour for the law enforcement personnel and the patrol vehicle will be allowed. Any scheduling fee is subsidiary per Standard Specification 502.4.2.

Cancel law enforcement personnel when the event is canceled. Cancellation, minimums or "show up" fees will not be paid when cancellation is made 12 hours prior to beginning of the event. Failure to cancel within 12 hours will not be cause for payment for cancellation, minimums, or "show up" time. Payment of actual "show up" time to the event site due to cancellation will be on a case by case basis at a maximum of 2 hours per officer.

Alterations to the cancellation and maximum rate must be approved by the Engineer or pre-determined by official policy of the officers governing authority.

Back Up Alarm

For hours 9 P to 5 A, utilize a non-intrusive, self-adjusting noise level reverse signal alarm. This is not applicable to hot mix or seal coat operations. This is subsidiary.

Water Quality Ponds

Provide an electronic pdf of As-Built within 60 calendar days of a Water Quality Pond becoming active. As-Built shall include GPS coordinates and elevations of all flowlines for inlets, flowlines for outlets, top of the pond, and bottom of the pond. Schedule and conduct a walk thru inspection with the Engineer prior to providing the As-Built. Clean the pond as directed. Cleaning of the pond will be paid using force account in accordance with Item 9.7, "Payment for Extra Work and Force Account Method."

ITEM 8 – PROSECUTION AND PROGRESS

The Contractor will have 134 working days from the NTP to fully complete the work

Working days will be charged based on a standard workweek. Working days will be charged Monday through Friday, excluding national or state holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. between 7:00 A.M. and 6:00 P.M., unless otherwise shown in the Contract. The Contractor has the option of working on Saturdays or state holidays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission of the Engineer. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or holiday, and weather or other conditions permit the performance of work for 7 hr. between 7:00 A.M. and 6:00 P.M., a working day will be charged.

Work is allowed to be performed during the nighttime, with prior approval, per Article 8.3.

Electronic versions of schedules will be saved in native format and delivered in both native and PDF formats.

Provide via email a 3-week look-ahead schedule in Gantt chart format. Submit weekly prior to the project meeting or by noon on Friday, whichever comes first. Designate each activity as night or day shift and include the name of the foreman or contractor. The chart shall have a specific section dedicated solely to lane closures and detours. Each lane closure and detour shall be an individual item on the schedule.

Lane Closure Assessment

Rates for lane closures will be assessed as shown in the **Table 1** below. Unallowable lane closures during specific timeframes will be assessed based on these fees on an hourly basis. For Lane Closure Assessments, the hour will be broken into four 15-minute periods, rounded up to the nearest 15-minute period. These assessments apply to late closure pickup as well.

Table 1: Lane Closure Assessment Rates

Lane Closure Period	Late Charges (Per Lane)	
	US 183	
	Lane	Shoulder
0-15 mins	\$1,000	\$1,000
15-30 mins	\$2,000	\$2,000
30-45 mins	\$3,000	\$3,000
45-60 mins	\$4,000	\$4,000
Every additional 15-minute interval after 1 hour	\$2,000	\$2,000

For example: If the contractor has one southbound lane of traffic closed on US 183 until Monday at 5:32 a.m., the contractor is 32 minutes outside of the allowable lane closure period. Refer to Item 502 for Allowable Lane Closure Times. The late charges will be accrued as follows:

$$1 \text{ lane closed} \times [\$1,000 + \$1,000 + \$1,000] = \$3,000$$

Emergency lane closures are not subject to lane closure charge assessments. Emergency lane closures are defined as closures caused by circumstances other than those caused by the contractor and shall be approved by the authority.

ITEM 100 - PREPARING RIGHT OF WAY

Prep ROW must not begin until accessible trees designated for preservation have been protected, items listed in the EPIC have been addressed, and SW3P controls installed in accessible areas.

Backfill material will be Type B Embankment using ordinary compaction.

Follow Item 752.4 Work Methods and Item 752 general notes when removing or working on or near trees and brush.

ITEM 110 – EXCAVATION

Unsuitable material encountered in a cut section will be considered waste. Unsuitable material is defined as shale, clay shale, shaley clay or an embankment material having a PI greater than 40.

ITEM 132 – TYPE B EMBANKMENT

Contractor Shall obtain owner approval of soil test results that demonstrate required strength parameters prior to use.

Materials	Friction Angle (degrees)	Shear Strength (PSF)	Unit WT (PCF)	Liquid Limit	Plasticity Index
Type B Embankment Ordinary Compaction	30	0	120	<=50	<=30

ITEM 168 – VEGETATIVE WATERING



Water all areas of project to be seeded or sodded at a rate of one quarter inch per week for a minimum of 12 weeks from the date the area is seeded or sodded.

Maintain the seedbed in a condition favorable for the growth of grass. Watering can be postponed immediately after a rainfall on the site of ½ inch or greater but will be resumed before the soil dries out. Continue watering until final acceptance.

Obtain water at a source that is metered (furnish a current certification of the meter being used) or furnish the manufacturer’s specifications showing the tank capacity for each truck used. Notify the Engineer, each day that watering takes place, before watering, so that meter readings or truck counts can be verified.

Vegetative Watering is subsidiary to pertinent Sodding and Seeding Items.

Keep the Engineer informed of areas where Vegetative Watering has been performed.

ITEM 204 – SPRINKLING

Apply water for dust control as directed. When dust control is not being maintained, cease operations until dust control is maintained. Consider subsidiary to the pertinent Items.

ITEM 400 - EXCAVATION AND BACKFILL FOR STRUCTURES

Top of excavations shall maintain a minimum of 4' clear distance to existing roadways.

Obtain approval of all compaction equipment prior to all backfilling operations.

ITEM 420 – CONCRETE SUBSTRUCTURES

Bonding agents are required at construction joints. Do not use membrane curing for structural concrete as defined in Item 421, Table 8. At construction joints, used bonding mortar, grout, epoxy or other approved material as a bonding agent.

Perform work during good weather unless otherwise directed. If work is performed at Contractor's option, when inclement weather is impending, and the work is damaged by the weather, the Contractor is responsible for all costs associated with repairs/replacement.

Remove all loose Formwork and other Materials from the floodplain or drainage areas daily.

ITEM 421 - HYDRAULIC CEMENT CONCRETE

Provide mix designs for Mobility Authority approval.

Provide sulfate resistant concrete for all drilled shafts and box culverts.

Strength evaluation using maturity testing, Tex-426-A may be used for all concrete elements except drilled shafts and mass concrete pours.

Maturity meters may be used for temperature gradient determination in mass concrete pours.

To eliminate the possibility of iron ore stains, all concrete mix designs used on the project shall have crushed coarse aggregate.

ITEM 423 - RETAINING WALLS

Refer to Geotechnical Report and Memos for allowable soil capacities and other wall design recommendations.

Cast-in-Place Wall Construction

Cast-in-place wall construction includes retaining walls, pond structures (walls, splitter boxes and weir structures) and other miscellaneous wall elements detailed in the Plans.

Backfill for cast-in-place walls shall be Type-B embankment material meeting the requirements of Item 132 "Embankment."

Walls at detention and water quality ponds are designed to support traffic surcharge in the vicinity of an existing or proposed roadway.

ITEM 432 - RIPRAP

Mow strip riprap will be 4 in. and all other riprap will be 5 in. unless otherwise shown on the plans or in the pay items.

Project Number: 23183S22701M
County: Travis
Highway: US 183

Sheet:
Control:

Saw-cut existing riprap then epoxy 12 in. long No. 3 or No. 4 bars 6 in. deep at a maximum spacing of 18 in. in each direction to tie new riprap to existing riprap. This work is subsidiary.

Provide weephole in riprap as shown on plans or as directed.

ITEM 467 - SAFETY END TREATMENT

Field adjust pipe end to maintain the necessary slope. Field cutting of pipe end is allowed. Coat all metal field cuts or exposed reinforcement with asphalt paint.

ITEM 496 – REMOVING STRUCTURES

Accept ownership of the inlet grates and manhole covers and properly dispose of them outside the limits of the right of way in accordance with federal, state and local regulations.

ITEM 502 - BARRICADES, SIGNS, AND TRAFFIC HANDLING

Table 1

<u>Roadway</u>	<u>Limits</u>	<u>Allowable Closure Time</u>
US 183 NBGP	FM 969 to Bolm Rd.	8 P to 5 A
All	Within 200' of a signalized intersection	9 P to 5 A

Table 2 (Mobile Operations)

<u>Roadway</u>	<u>Allowable Sun Night thru Fri Noon</u>	<u>Allowable Sat thru Sun Morn</u>
Within Austin City Limits	10 A to 2 P and 7 P to 6 A	7 P to 10 A

For roadways without defined allowable closure times, nighttime lane closures will be allowed from 8 P to 5 A. Unless stated, daytime or Friday night lane closures will not be allowed and one lane in each direction will remain open at all times for all roadways.

Full mainlane or frontage road closures will not be allowed. Full ramp closures must be approved by the Engineer.

No closures will not be allowed on Friday night

No closures will be allowed on the weekends adjacent to, working day prior, and working day after the National Holidays defined in the Standard Specifications and Easter weekend. Closures the Sunday of the Super Bowl will not be allowed from 1 P to 11 P. No closures will be allowed on Friday and the weekends for Formula 1 at Circuit of the Americas, Austin City Limits Fest, South by Southwest, Republic of Texas Rally, UT home football games, Rodeo Austin, State of Texas sales tax holiday, or other special events that could be impacted by the construction. All lanes will be open by noon of the day before these special events.

To account for directional traffic volumes, begin and end times of closures may be shifted equally by the Engineer. The closure duration will remain. Added compensation is not allowed.

Project Number: 23183S22701M
County: Travis
Highway: US 183

Sheet:
Control:

Submit an emailed request for a lane closure (LCN) to the Mobility Authority. The email will be submitted in the format provided. Receive concurrence prior to implementation. Submit a cancellation of lane closures a minimum of 18 hours prior to implementation. Blanket requests for extended periods are not allowed. Max duration of a request is 2 weeks prior to requiring resubmittal. Provide 2-hour notice prior to implementation and immediately upon removal of the closure.

For roadways listed in Table 1: Submit the request 96 hours prior to implementation.

For roadways not listed in Table 1: Submit the request a minimum of 48 hours prior to the closure and by the following deadline immediately prior to the closure: 11A on Tuesday or 11A on Friday.

For all roadways: Submit request for traffic detours and full roadway closures 168 hours prior to implementation. Submit request for nighttime work 96 hours to implementation date.

Maintain a minimum of 1 through lanes in each direction during the daylight hours, unless otherwise directed in plans.

Cancellations of accepted closures (not applicable to full closures or detours) due to weather will not require resubmission in accordance with the above restrictions if the work is completed during the next allowable closure time.

In the case of an unauthorized lane closure, all approved LCNs will be revoked until a meeting is held between the contractor and the Engineer. No lane closure notices will be approved until the meeting is concluded.

Coordinate Main Lane closures with adjacent projects including those projects owned by other agencies and departments. Closures that conflict with adjacent contractor will be prioritized according to critical path work per latest schedule. Conflicting critical path or non-critical work will be approved for first LCN submitted. Denial of a closure due to prioritization or other reasons will not be reason for time suspension, delay, overhead, etc.

Cover, relocate or remove existing signs that conflict with traffic control. Install all permanent signs, delineation, and object markers required for the operation of the roadway before opening to traffic. Use of temporary mounts is allowed or may be required until the permanent mounts are installed or not impacted by construction. Maintain the temporary mounts. This work is subsidiary.

Shadow Vehicle with TMA is required as shown in the TCP sheets and for setup/removal of traffic control devices.

Meet with the Engineer prior to lane closures to ensure that sufficient equipment, materials, devices, and workers will be used. Take immediate action to modify traffic control, if at any time the queue becomes greater than 20 minutes. Have a contingency plan of how modification will occur. Consider inclement weather prior to implementing the lane closures. Do not set up traffic control when the pavement is wet.

Do not set up traffic control when the pavement is wet.

Maintain access to all streets and driveways at all times, unless otherwise approved. Considered subsidiary to the pertinent Items.

Project Number: 23183S22701M

County: Travis

Highway: US 183

Sheet:

Control:

ITEM 506 - TEMPORARY EROSION, SEDIMENTATION, AND ENV CONTROLS

Install, maintain, remove erosion, sedimentation and environmental control measures in areas of the right of way utilized by the contractor that are outside the limits of disturbance required for construction. Permanently stabilize the area. This work is subsidiary.

Central Texas Regional Mobility Authority

ZEN GARDENS PROJECT

CSJ: 0151-09-036
CTRMA CONTRACT NO. 23183S22701M

SPECIFICATION LIST

PREFACE:

The "Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges" of the Texas Department of Transportation, 2014, as amended and augmented by the Supplemental Specifications following, shall govern the performance of the Contract. These specifications hereby are made a part of the Contract as fully and with the same effect as if set forth at length herein.

Attention is directed to the fact that any other documents printed by the Texas Department of Transportation modifying or supplementing said "Standard Specifications", such as Standard Supplemental Specifications, Special Provisions (by the Department), Notice to Bidders, etc., do not form a part of this Contract nor govern its performance, unless specifically so-stated in the Supplemental Specifications herein contained.

Attention is directed to the use of "Proposal" in standard TxDOT documents included in this contract (Standard Specifications, Special Provisions, & Special Specifications) is equivalent to "Bid" in the Mobility Authority's documents. This shall be accounted for when working contract documents prepared by the Mobility Authority with those standards prepared by TxDOT.

Attention is directed to the use of "Department" in standard TxDOT documents included in this contract (Standard Specifications, Special Provisions, & Special Specifications) is equivalent to "Mobility Authority" in the Mobility Authority's documents.

References made to specific section numbers in these Special Provisions, or in any of the various documents which constitute the complete Contract Documents, shall, unless otherwise denoted, be construed as referenced to the corresponding section of the "Standard Specifications" issued by the Texas Department of Transportation in 2014.

CONTROL : 0151-09-036
PROJECT :
CONTRACT : 23183S22701M
HIGHWAY : 183 TOLL
COUNTY : TRAVIS

Central Texas Regional Mobility Authority

GOVERNING SPECIFICATIONS

(STANDARD SPECIFICATIONS, SPECIAL PROVISIONS, AND SPECIAL SPECIFICATIONS)

WHERE DISCREPANCIES OCCUR BETWEEN THE TECHNICAL SPECIFICATIONS, THE FOLLOWING DESCENDING ORDER OF PRIORITY SHALL GOVERN: (1) SPECIAL CONDITIONS, (2) SPECIAL PROVISIONS TO SPECIAL SPECIFICATIONS, (3) SPECIAL SPECIFICATIONS, (4) SPECIAL PROVISIONS, AND (5) STANDARD SPECIFICATIONS.

ALL SPECIFICATIONS AND SPECIAL PROVISIONS APPLICABLE TO THIS PROJECT ARE IDENTIFIED AS FOLLOWS:

STANDARD SPECIFICATIONS: ADOPTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION NOVEMBER 1, 2014. STANDARD SPECIFICATIONS ARE INCORPORATED INTO THE CONTRACT BY REFERENCE.

- ITEMS 1-9 GENERAL REQUIRMENTS AND COVENANTS
- ITEM 100 PREPARING RIGHT OF WAY (103)
- ITEM 104 REMOVING CONCRETE
- ITEM 110 EXCAVATION (132)
- ITEM 132 EMBANKMENT (100)(160) (204)(210)(216) (400)
- ITEM 162 SODDING FOR EROSION CONTROL (166)(168)
- ITEM 168 VEGETATIVE WATERING
- ITEM 400 EXCAVATION AND BACKFILL FOR STRUCTURES (110)(132)(401)(402)(403)(416) (420)(421)(423)
- ITEM 402 TRENCH EXCAVATION PROTECTION
- ITEM 420 CONCRETE SUBSTRUCTURES (421)(422)(426)(427)(440)(448)
- ITEM 423 RETAINING WALLS (110)(132)(216)(400)(420)(421)(424)(440)(445)(458)(556)
- ITEM 432 RIPRAP (420)(421)(431)(440)
- ITEM 459 GABIONS AND GABION MATTRESSES
- ITEM 464 REINFORCED CONCRETE PIPE (400)(402)(403)(467)(476)
- ITEM 467 SAFETY END TREATMENT (420)(421)(432)(440)(442)(445)(460)(464)
- ITEM 496 REMOVING STRUCTURES
- ITEM 500 MOBILIZATION
- ITEM 502 BARRICADES, SIGNS, AND TRAFFIC HANDLING
- ITEM 506 TEMPORARY EROSION, SEDIMENTATION AND ENVIRONMENTAL CONTROLS (161) (432)(556)



SPECIAL PROVISIONS:

REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS
(FORM FHWA 1273, JULY 2022)

WAGE RATES		B-4
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Nondiscrimination		B-20
SPECIAL PROVISION TO ITEM 000	(000--003)	B-23
Certification of Nondiscrimination in Employment		
SPECIAL PROVISION TO ITEM 000	(000--004)	B-24
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)		
SPECIAL PROVISION TO ITEM 000	(000--005)	B-28
Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)		
SPECIAL PROVISION TO ITEM 000	(000--006)	B-32
On-the-Job Training Program		
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SPECIAL PROVISION TO ITEM 000	(000--012--RMA)	B-34
Davis-Bacon and Related Act Provisions		
SPECIAL PROVISION TO ITEM 000	(000--241)	B-43
Cargo Preference Act Requirements in Federal Aid Contracts		
SPECIAL PROVISION TO ITEM 000	(000--394)	B-44
Disadvantaged Business Enterprise in Federal-Aid Contracts		
SPECIAL PROVISION TO ITEM 000	(000--659)	B-51
Notice of Contractor Performance Evaluations		
SPECIAL PROVISION TO ITEM 000	(000--954--RMA)	B-53
Certificate of Interested Parties (Form 1295)		
SPECIAL PROVISION TO ITEM 000	(000--1243)	B-54
Schedule of Liquidated Damages		
SPECIAL PROVISION TO ITEM 001	(001--001--RMA)	B-55
SPECIAL PROVISION TO ITEM 002	(002--005--RMA)	B-58
SPECIAL PROVISION TO ITEM 002	(002--009)	B-59
SPECIAL PROVISION TO ITEM 002	(002--011)	B-60
SPECIAL PROVISION TO ITEM 003	(003--005--RMA)	B-61
SPECIAL PROVISION TO ITEM 004	(004--001--RMA)	B-62
SPECIAL PROVISION TO ITEM 005	(005--002)	B-63
SPECIAL PROVISION TO ITEM 005	(005--003)	B-64
SPECIAL PROVISION TO ITEM 006	(006--001--RMA)	B-65
SPECIAL PROVISION TO ITEM 007	(007--003--RMA)	B-66
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SPECIAL PROVISION TO ITEM 008	(008--002--RMA)	B-74
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SPECIAL PROVISION TO ITEM 464	(464--001)	B-92
SPECIAL PROVISION TO ITEM 502	(502--008)	B-93
SPECIAL PROVISION TO ITEM 506	(506--005)	B-94

GENERAL: THE ABOVE-LISTED SPECIFICATION ITEMS ARE THOSE UNDER WHICH PAYMENT IS TO BE MADE. THESE, TOGETHER WITH SUCH OTHER PERTINENT ITEMS, IF ANY, AS MAY BE REFERRED TO IN THE ABOVE-LISTED SPECIFICATION ITEMS, AND INCLUDING THE SPECIAL PROVISIONS AND SPECIAL SPECIFICATIONS LISTED ABOVE, CONSTITUTE THE COMPLETE SPECIFICATIONS FOR THIS PROJECT.

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

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

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

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

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

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

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

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

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

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

10. Assurances Required:

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

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

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

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

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

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

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

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

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

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

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

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

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

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

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

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

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

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

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

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

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

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

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

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

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

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

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

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

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

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

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

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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

Special Provision to Item 000

Nondiscrimination

1. DESCRIPTION

The Contractor agrees, during the performance of the service under this Agreement, that the Contractor shall provide all services and activities required in a manner that complies with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 (S.933), and all other federal and state laws, rules, regulations, and orders pertain to equal opportunity in employment, as if the Contractor were an entity bound to comply with these laws. The Contractor shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

2. DEFINITION OF TERMS

Where the term "Contractor" appears in the following six nondiscrimination clauses, the term "Contractor" is understood to include all parties to Contracts or agreements with the Texas Department of Transportation.

3. NONDISCRIMINATION PROVISIONS

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 3.1. **Compliance with Regulations.** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- 3.2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- 3.4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 3.5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- withholding payments to the Contractor under the Contract until the Contractor complies, and/or
- cancelling, terminating, or suspending a Contract, in whole or in part.

3.6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs (3.1) through (3.6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. PERTINENT NONDISCRIMINATION AUTHORITIES:

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 4.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 4.2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4.3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 4.4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 4.5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 4.6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 4.7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and Contractors, whether such programs or activities are Federally funded or not);
- 4.8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- 4.9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 4.10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs,

policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- 4.11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 4.12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Special Provision to Item 000

Certification of Nondiscrimination in Employment



1. GENERAL

By signing this proposal, the Bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file 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.

Special Provision to Item 000

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



1. GENERAL

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. GOALS

2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

2.2. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for minority participation in each trade, %	Goals for female participation in each trade, %
See Table 1	6.9

2.3. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2.4. A Contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each Contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other Contractors and subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. SUBCONTRACTING

The Contractor must provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation pending concurrence of the Department in the award. The notification will list the names,

address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

4. COVERED AREA

As used in this special provision, and in the Contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

5. REPORTS

The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1
Goals for Minority Participation

County	Participation, %	County	Participation, %
Anderson	22.5	Chambers	27.4
Andrews	18.9	Cherokee	22.5
Angelina	22.5	Childress	11.0
Aransas	44.2	Clay	12.4
Archer	11.0	Cochran	19.5
Armstrong	11.0	Coke	20.0
Atascosa	49.4	Coleman	10.9
Austin	27.4	Collin	18.2
Bailey	19.5	Collingsworth	11.0
Bandera	49.4	Colorado	27.4
Bastrop	24.2	Comal	47.8
Baylor	11.0	Comanche	10.9
Bee	44.2	Concho	20.0
Bell	16.4	Cooke	17.2
Bexar	47.8	Coryell	16.4
Blanco	24.2	Cottle	11.0
Borden	19.5	Crane	18.9
Bosque	18.6	Crockett	20.0
Bowie	19.7	Crosby	19.5
Brazoria	27.3	Culberson	49.0
Brazos	23.7	Dallam	11.0
Brewster	49.0	Dallas	18.2
Briscoe	11.0	Dawson	19.5
Brooks	44.2	Deaf Smith	11.0
Brown	10.9	Delta	17.2
Burleson	27.4	Denton	18.2
Burnet	24.2	DeWitt	27.4
Caldwell	24.2	Dickens	19.5
Calhoun	27.4	Dimmit	49.4
Callahan	11.6	Donley	11.0
Cameron	71.0	Duval	44.2
Camp	20.2	Eastland	10.9
Carson	11.0	Ector	15.1
Cass	20.2	Edwards	49.4
Castro	11.0	Ellis	18.2

County	Participation, %	County	Participation, %
El Paso	57.8	Kenedy	44.2
Erath	17.2	Kent	10.9
Falls	18.6	Kerr	49.4
Fannin	17.2	Kimble	20.0
Fayette	27.4	King	19.5
Fisher	10.9	Kinney	49.4
Floyd	19.5	Kleberg	44.2
Foard	11.0	Knox	10.9
Fort Bend	27.3	Lamar	20.2
Franklin	17.2	Lamb	19.5
Freestone	18.6	Lampasas	18.6
Frio	49.4	LaSalle	49.4
Gaines	19.5	Lavaca	27.4
Galveston	28.9	Lee	24.2
Garza	19.5	Leon	27.4
Gillespie	49.4	Liberty	27.3
Glasscock	18.9	Limestone	18.6
Goliad	27.4	Lipscomb	11.0
Gonzales	49.4	Live Oak	44.2
Gray	11.0	Llano	24.2
Grayson	9.4	Loving	18.9
Gregg	22.8	Lubbock	19.6
Grimes	27.4	Lynn	19.5
Guadalupe	47.8	Madison	27.4
Hale	19.5	Marion	22.5
Hall	11.0	Martin	18.9
Hamilton	18.6	Mason	20.0
Hansford	11.0	Matagorda	27.4
Hardeman	11.0	Maverick	49.4
Hardin	22.6	McCulloch	20.0
Harris	27.3	McLennan	20.7
Harrison	22.8	McMullen	49.4
Hartley	11.0	Medina	49.4
Haskell	10.9	Menard	20.0
Hays	24.1	Midland	19.1
Hemphill	11.0	Milam	18.6
Henderson	22.5	Mills	18.6
Hidalgo	72.8	Mitchell	10.9
Hill	18.6	Montague	17.2
Hockley	19.5	Montgomery	27.3
Hood	18.2	Moore	11.0
Hopkins	17.2	Morris	20.2
Houston	22.5	Motley	19.5
Howard	18.9	Nacogdoches	22.5
Hudspeth	49.0	Navarro	17.2
Hunt	17.2	Newton	22.6
Hutchinson	11.0	Nolan	10.9
Irion	20.0	Nueces	41.7
Jack	17.2	Ochiltree	11.0
Jackson	27.4	Oldham	11.0
Jasper	22.6	Orange	22.6
Jeff Davis	49.0	Palo Pinto	17.2
Jefferson	22.6	Panola	22.5
Jim Hogg	49.4	Parker	18.2
Jim Wells	44.2	Parmer	11.0
Johnson	18.2	Pecos	18.9
Jones	11.6	Polk	27.4
Karnes	49.4	Potter	9.3
Kaufman	18.2	Presidio	49.0
Kendall	49.4	Randall	9.3

County	Participation, %	County	Participation, %
Rains	17.2	Reagan	20.0
Real	49.4	Throckmorton	10.9
Red River	20.2	Titus	20.2
Reeves	18.9	Tom Green	19.2
Refugio	44.2	Travis	24.1
Roberts	11.0	Trinity	27.4
Robertson	27.4	Tyler	22.6
Rockwall	18.2	Upshur	22.5
Runnels	20.0	Upton	18.9
Rusk	22.5	Uvalde	49.4
Sabine	22.6	Val Verde	49.4
San Augustine	22.5	Van Zandt	17.2
San Jacinto	27.4	Victoria	27.4
San Patricio	41.7	Walker	27.4
San Saba	20.0	Waller	27.3
Schleicher	20.0	Ward	18.9
Scurry	10.9	Washington	27.4
Shackelford	10.9	Webb	87.3
Shelby	22.5	Wharton	27.4
Sherman	11.0	Wheeler	11.0
Smith	23.5	Wichita	12.4
Somervell	17.2	Wilbarger	11.0
Starr	72.9	Willacy	72.9
Stephens	10.9	Williamson	24.1
Sterling	20.0	Wilson	49.4
Stonewall	10.9	Winkler	18.9
Sutton	20.0	Wise	18.2
Swisher	11.0	Wood	22.5
Tarrant	18.2	Yoakum	19.5
Taylor	11.6	Young	11.0
Terrell	20.0	Zapata	49.4
Terry	19.5	Zavala	49.4

Special Provision to Item 000

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)



1. GENERAL

1.1. As used in these specifications:

- "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

1.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the equal employment opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

1.4. The Contractor will implement the specific affirmative action standards provided in Section 1.7.1. through Section 1.7.16. of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing Contracts in geographical areas where they do not have a Federal or federally assisted construction Contract will apply the minority and female goals established for the geographical area where the Contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The

Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- 1.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 1.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 1.7. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensive as the following:
 - 1.7.1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 1.7.2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 1.7.3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - 1.7.4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
 - 1.7.5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor will provide notice of these programs to the sources compiled under 7b above.
 - 1.7.6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - 1.7.7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other

employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- 1.7.8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- 1.7.9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 1.7.10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- 1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 1.7.12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- 1.7.13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- 1.7.14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
- 1.7.15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- 1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 7.1. through Section 7.16.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 7.1. through Section 7.16. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's noncompliance.
- 1.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor

may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- 1.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 1.11. The Contractor will not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
- 1.12. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- 1.13. The Contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
- 1.14. The Contractor will designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- 1.15. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- 1.16. In addition to the reporting requirements set forth elsewhere in this Contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, will submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the included instructions.

Special Provision to Item 000

On-the-Job Training Program



1. DESCRIPTION

The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

2. TRAINEE ASSIGNMENT

Training assignments are based on the past volume of state-let highway construction contracts awarded with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.

3. PROGRAM REQUIREMENTS

Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees will be paid at least 60% of the appropriate minimum journeyworker's rate specified in the Contract for the first half of the training period, 75% for the third quarter, and 90% for the last quarter, respectively.

4. REIMBURSEMENT

If requested, Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department. Training may occur on this project, all other Department contracts, or local-administered federal-aid projects with concurrence of the local government entity. However, reimbursement for training is not available on projects to the extent that such projects that do not contain federal funds.

5. COMPLIANCE

The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.7., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

Special Provision to Item 000

Buy America

Steel and iron products to be incorporated into the project must be of domestic origin. All manufacturing processes for steel and iron products to be incorporated into the project must take place domestically, including donated material.

Reminders:

Depending on the Steel/iron item received at the project, described below are the requirements for acceptance.

1. Steel and Iron Items Inspected and Tested by CSTIM&P

- The project engineer receives CST/M&P Structural Test Reports as proof of compliance with the requirements of the specification.
- CST/M&P obtains from the supplier a completed Form 1818 (D-9-USA-1), "Material Statement" with attached MTRs, certifications, galvanizing reports, etc.

2. Steel and Iron Items Received and Sampled by the Project Engineer for Testing by CSTIM&P

- The project engineer submits samples with the required documentation obtained from the supplier (completed Form 1818 (D-9-USA-1) with attached MTRs, certifications, galvanizing reports, etc.) to CST/M&P for testing.
- CSTM&P issues a CST/M&P General Test Report for all passing material (proof of compliance with the requirements of the specifications).

3. Steel and Iron Items Received, Inspected, and Accepted by the Project Engineer

- The project engineer obtains from the supplier the completed Form 1818 (D-9-USA-1) with attached MTRs, certifications, galvanizing reports, etc.
- CST/M&P assists the project engineer when requested.

4. Steel and Iron Items Received from Regional or District Warehouse (Pretested) Stock

- The project engineer obtains documentation verifying the material was obtained from a regional or district warehouse.
- CSTM&P, when requested to inspect and test, obtains from the supplier the completed Form 1818 (D-9-USA-1) with attached MTRs, etc.

Special Provision to Item 000

Davis-Bacon and Related Act Provisions

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

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

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

10. Certification of eligibility.

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

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

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

WAGE DETERMINATIONS

General Decision Number: TX180016 01/05/2018 TX16

Superseded General Decision Number: TX20170016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects.

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but

it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
 0 01/05/2018

* SUTX2011-006 08/03/2011

 Rates Fringes

CEMENT MASON/CONCRETE
 FINISHER (Paving and
 Structures)\$ 12.56

ELECTRICIAN\$ 26.35

FORM BUILDER/FORM SETTER
 Paving & Curb..... \$ 12.94
 Structures..... \$ 12.87

LABORER
 Asphalt Raker\$ 12.12
 Flagger.....\$ 9.45
 Laborer, Common \$ 10.50
 Laborer, Utility..... \$ 12.27
 Pipelayer \$ 12.79
 Work Zone Barricade
 Servicer..... \$ 11.85

PAINTER (Structures)..... \$ 18.34

POWER EQUIPMENT OPERATOR:
 Agricultural Tractor..... \$ 12.69
 Asphalt Distributor..... \$ 15.55
 Asphalt Paving Machine\$ 14.36
 Boom Truck..... \$ 18.36
 Broom or Sweeper \$ 11.04
 Concrete Pavement
 Finishing Machine \$ 15.48
 Crane, Hydraulic 80 tons
 or less.\$ 18.36
 Crane, Lattice Boom 80
 tons or less..... \$ 15.87
 Crane, Lattice Boom over
 80 tons.\$ 19.38
 Crawler Tractor\$ 15.67
 Directional Drilling
 Locator..... \$ 11.67
 Directional Drilling
 Operator..... \$ 17.24
 Excavator 50,000 lbs or
 Less.\$ 12.88
 Excavator over 50,000 lbs. \$ 17.71
 Foundation Drill, Truck
 Mounted \$ 16.93

Front End Loader, 3 CY or
 Less.\$ 13.04
 Front End Loader, Over 3 CY.\$ 13.21
 Loader/Backhoe..... \$ 14.12
 Mechanic..... \$ 17.10
 Milling Machine\$ 14.18
 Motor Grader, Fine Grade... \$ 18.51
 Motor Grader, Rough\$ 14.63
 Pavement Marking Machine...\$ 19.17
 Reclaimer/Pulverizer..... \$ 12.88
 Roller, Asphalt..... \$ 12.78
 Roller, Other..... \$ 10.50
 Scraper\$ 12.27
 Spreader Box.\$ 14.04
 Trenching Machine, Heavy. ..\$ 18.48

Servicer..... \$ 14.51

Steel Worker
 Reinforcing..... \$ 14.00
 Structural..... \$ 19.29

TRAFFIC SIGNAL INSTALLER
 Traffic Signal/Light Pole
 Worker\$ 16.00

TRUCK DRIVER
 Lowboy-Float.\$ 15.66
 Off Road Hauler \$ 11.88
 Single Axle \$ 11.79
 Single or Tandem Axle Dump
 Truck \$ 11.68
 Tandem Axle Tractor w/Semi
 Trailer..... \$ 12.81

WELDER..... \$ 15.97

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

Special Provision 000

Cargo Preference Act Requirements in Federal Aid Contracts



1. DESCRIPTION

All recipients of federal financial assistance are required to comply with the U.S. Department of Transportation's (DOT) Cargo Preference Act Requirements, 46 CFR Part 381, Use of United States-Flag Vessels.

This requirement applies to material or equipment that is acquired specifically for a Federal-aid highway project. It is not applicable to goods or materials that come into inventories independent of a Federal Highway Administration (FHWA) funded contract.

When oceanic shipments are necessary for materials or equipment acquired for a specific Federal-aid construction project, the contractor agrees to:

- Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- Furnish a legible copy of a rated, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of 46 CFR Part 381 Section 7, "Federal Grant, Guaranty, Loan and Advance of Funds Agreements," within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, to both the Engineer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- Insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Special Provision to Item 000

Disadvantaged Business Enterprise in Federal-Aid Contracts



1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

2.1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of Contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this Contract as follows.

The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A, and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this Contract.

The Contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Department deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract.

By signing the Contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment.

2.2. Definitions.

2.2.1. **Administrative Reconsideration.** A process by which the low bidder may request reconsideration when the Department determines the good faith effort (GFE) requirements have not been met.

2.2.2. **Commercially Useful Function (CUF).** A CUF occurs when a DBE has the responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing, and supervising the work.

2.2.3. **Disadvantaged Business Enterprise (DBE).** A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.

2.2.4. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge, and

in which the DBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- 2.2.5. **DOT.** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- 2.2.6. **Federal-Aid Contract.** Any Contract between the Department and a Contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.7. **Good Faith Effort.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- 2.2.8. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website: <http://www.census.gov/eos/www/naics/>.
- 2.2.9. **Race-Conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- 2.2.10. **Race-Neutral DBE Participation.** Any participation by a DBE through customary competitive procurement procedures.
- 2.2.11. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on a Contract may be counted toward achievement of the assigned DBE Contract goal.
- 2.3. **Contractor's Responsibilities.**
- 2.3.1. **DBE Liaison Officer.** Designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- 2.3.2. **Compliance Tracking System (CTS).** This Contract is subject to electronic Contract compliance tracking. Contractors and DBEs are required to provide any noted and requested Contract compliance-related data electronically in the Department's tracking system. This includes commitments, payments, substitutions, and good faith efforts. Contractors and DBEs are responsible for responding by any noted response date or due date to any instructions or request for information, and to check the system on a regular basis. A Contractor is responsible for ensuring all DBEs have completed all requested items and that their contact information is accurate and up-to-date. The Department may require additional information related to the Contract to be provided electronically through the system at any time before, during, or after contract award. The system is web-based and can be accessed at the following Internet address: <https://txdot.txdotcms.com/>.
- In its sole discretion, the Department may require that contract compliance tracking data be submitted by Contractors and DBEs in an alternative format prescribed by the Department.
- 2.3.3. **Apparent Low Bidder.** The apparent low bidder must submit DBE commitments to satisfy the DBE goal or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, no later than 5 calendar days after bid opening. The means of transmittal and the risk of timely receipt of the information will be the bidder's responsibility and no extension of the 5-calendar-day timeframe will be allowed for any reason.

2.3.4. **DBE Contractor.** A DBE Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. In the event a DBE subcontracts to a non-DBE, that information must be reported monthly.

2.3.5. **DBE Committal.** Only those DBEs certified by the TUCP are eligible to be used for goal attainment. The Department maintains the TUCP DBE Directory. The Directory can be accessed at the following Internet address: <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

A DBE must be certified on the day the commitment is considered and at time of subcontract execution. It is the Contractor's responsibility to ensure firms identified for participation are approved certified DBE firms.

The Bidder is responsible to ensure that all submittals are checked for accuracy. Any and all omissions, deletions, and/or errors that may affect the end result of the commitment package are the sole liabilities of the bidder.

Commitments in excess of the goal are considered race-neutral commitments.

2.3.6. **Good Faith Effort Requirements.** A Contractor who cannot meet the Contract goal, in whole or in part, must make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

2.3.6.1. **Administrative Reconsideration.** If the Department determines that the apparent low bidder has failed to satisfy the good faith efforts requirement, the Department will notify the Bidder of the failure and will give the Bidder an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so..

The Bidder must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Texas Department of Transportation, Civil Rights Division, 125 East 11th Street, Austin, Texas 78701-2483.

If a request for administrative reconsideration is not filed within the period specified the determination made is final and further administrative appeal is barred.

If a reconsideration request is timely received, the reconsideration decision will be made by the Department's DBE liaison officer or, if the DBE liaison officer took part in the original determination, the Department's executive director will appoint a department employee to perform the administrative reconsideration. The employee will hold a senior leadership position and will report directly to the executive director.

The meeting or written documentation must be provided or held within 7 days of the date the request was submitted.

The Department will provide to the Bidder a written decision if the Bidder did or did not make adequate good faith efforts to meet the Contract goal. The reconsideration decision is final and is not administratively appealed to DOT.

2.3.7. **Determination of DBE Participation.** The work performed by the DBE must be reasonably construed to be included in the work area and NAICS work code identified by the Contractor in the approved commitment.

Participation by a DBE on a Contract will not be counted toward DBE goals until the amount of the participation has been paid to the DBE.

Payments made to a DBE that was not on the original commitment may be counted toward the Contract goal if that DBE was certified as a DBE before the execution of the subcontract and has performed a Commercially Useful Function.

The total amount paid to the DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.

DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the Contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of the DBE's subcontract, the DBE firm may complete the work and the DBE firm's participation will be counted toward the Contract goal. If the DBE firm is decertified before the DBE firm has signed a subcontract, the Contractor is obligated to replace the ineligible DBE firm or demonstrate that it has made good faith efforts to do so.

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

The Contractor may count only 60% of its expenditure to a DBE regular dealer. According to 49 CFR 26.55(e)(2)(i), a DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. A long-term lease with a third-party transportation company is not eligible for 60% goal credit.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site.

A Contractor may count toward its DBE goal a portion of the total value of the Contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the Contract performed by the DBE.

2.3.8. **Commercially Useful Function.** It is the Contractor's obligation to ensure that each DBE used on federal-assisted contracts performs a commercially useful function on the Contract.

The Department will monitor performance during the Contract to ensure each DBE is performing a CUF.

Under the terms established in 49 CFR 26.55, a DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

With respect to material and supplies used on the Contract, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract

provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Department will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a CUF.

If the Department determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible participation. The denial period of time may occur before or after a determination has been made by the Department.

In case of the denial of credit for non-performance of a CUF, the Contractor will be required to provide a substitute DBE to meet the Contract goal or provide an adequate good faith effort when applicable.

- 2.3.8.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before the Department makes a final finding that no CUF has been performed by a DBE, the Department will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal to DOT.

- 2.3.9. **Joint Check.** The use of joint checks between a Contractor and a DBE is allowed with Department approval. To obtain approval, the Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Department.

The Department will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the Contract goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny and may result in the lack of participation towards the Contract goal requirement if DBE independence cannot be established.

Joint checks will not be allowed simply for the convenience of the Contractor.

If the proper procedures are not followed or the Department determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the Contract goal requirement, and the Contractor will need to make up the difference elsewhere on the project.

- 2.3.10. **DBE Termination and Substitution.** No DBE named in the commitment submitted under Section 2.3.5. will be terminated for convenience, in whole or part, without the Department's approval. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Unless consent is provided, the Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor, prior to submitting its request to terminate, must first give written notice to the DBE of its intent to terminate and the reason for the termination. The Contractor will copy the Department on the Notice of Intent to terminate.

The DBE has 5 calendar days to respond to the Contractor's notice and will advise the Contractor and the Department of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the prime Contractor's request for termination.

The Department may provide a shorter response time if required in a particular case as a matter of public necessity.

The Department will consider both the Contractor's request and DBE's stated position prior to approving the request. The Department may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. If the Department does not approve the request, the Contractor must continue to use the committed DBE firm in accordance with the Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the Contractor seeks to terminate, reduce, or substitute a DBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the DBE firm was engaged.

When a DBE subcontractor is terminated, make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established Contract goal, the work that the original DBE was to have performed under the Contract.

Submit the completed Form 2228, "DBE Termination Substitution Request," within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated. If the Department determines that good faith efforts were not demonstrated, the Contractor will have the opportunity to appeal the determination to the Civil Rights Division.

- 2.3.11. **Reports and Records.** By the 15th of each month and after work begins, report payments to meet the DBE goal and for DBE race-neutral participation on projects with or without goals. These payment reports will be required until all DBE subcontracting or material supply activity is completed. Negative payment reports are required when no activity has occurred in a monthly period.

Notify the Area Engineer if payment to any DBE subcontractor is withheld or reduced.

Before receiving final payment from the Department, the Contractor must indicate a final payment on the compliance tracking system. The final payment is a summary of all payments made to the DBEs on the project.

All records must be retained for a period of 3 years following completion of the Contract work, and must be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

- 2.3.12. **Failure to Comply.** If the Department determines the Contractor has failed to demonstrate good faith efforts to meet the assigned goal, the Contractor will be given an opportunity for reconsideration by the Department.

A Contractor's failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Department reserves the right to terminate the Contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor; or to secure a refund, not as a penalty but as liquidated damages, to the Department or such other remedy or remedies as the Department deems appropriate.

- 2.3.13. **Investigations.** The Department may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs and complainants using DBE Subcontractors to meet the

Contract goal, are required to cooperate fully and promptly with compliance reviews, investigations, and other requests for information.

2.3.14.

Falsification and Misrepresentation. If the Department determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Department to be unallowable, or if the Contractor engages in repeated violations, falsification, or misrepresentation, the Department may:

- refuse to count any fraudulent or misrepresented DBE participation;
- withhold progress payments to the Contractor commensurate with the violation;
- reduce the Contractor's prequalification status;
- refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
- seek any other available contractual remedy.

Special Provision 000

Notice of Contractor Performance Evaluations



1. GENERAL

In accordance with Texas Transportation Code §223.012, the Engineer will evaluate Contractor performance based on quality, safety, and timeliness of the project.

2. DEFINITIONS

- 2.1. **Project Recovery Plan (PRP)**—a formal, enforceable plan developed by the Contractor, in consultation with the District, that documents the cause of noted quality, safety, and timeliness issues and specifies how the Contractor proposes to correct project-specific performance deficiencies.

In accordance with Title 43, Texas Administrative Code (TAC), §9.23, the District will request a PRP if the Contractor's performance on a project is below the Department's acceptable standards and will monitor the Contractor's compliance with the established plan.

- 2.2. **Corrective Action Plan (CAP)**—a formal, enforceable plan developed by the Contractor, and proposed for adoption by the Construction or Maintenance Division, that documents the cause of noted quality, safety, and timeliness issues and specifies how the Contractor proposes to correct statewide performance deficiencies.

In accordance with 43 TAC §9.23, the Division will request a CAP if the average of the Contractor's statewide final evaluation scores falls below the Department's acceptable standards for the review period and will monitor the Contractor's compliance with the established plan.

3. CONTRACTOR EVALUATIONS

In accordance with Title 43, Texas Administrative Code (TAC) §9.23, the Engineer will schedule evaluations at the following intervals, at minimum:

- Interim evaluations—at or within 30 days after the anniversary of the notice to proceed, for Contracts extending beyond 1 yr., and
- Final evaluation—upon project closeout.

In case of a takeover agreement, neither the Surety nor its performing Contractor will be evaluated.

In addition to regularly scheduled evaluations, the Engineer may schedule an interim evaluation at any time to formally communicate issues with quality, safety, or timeliness. Upon request, work with the Engineer to develop a PRP to document expectations for correcting deficiencies.

Comply with the PRP as directed. Failure to comply with the PRP may result in additional remedial actions available to the Engineer under Item 5, "Control of the Work." Failure to meet a PRP to the Engineer's satisfaction may result in immediate referral to the Performance Review Committee for consideration of further action against the Contractor.

The Engineer will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards or comply with a PRP, including consideration of sufficient time.

Follow the escalation ladder if there is a disagreement regarding an evaluation or disposition of a PRP. The Contractor may submit additional documentation pertaining to the dispute. The District Engineer's decision

on a Contractor's evaluation score and recommendation of action required in a PRP or follow up for non-compliance is final.

4. DIVISION OVERSIGHT

Upon request of the Construction or Maintenance Division, develop and submit for Division approval a proposed CAP to document expectations for correcting deficiencies in the performance of projects statewide.

Comply with the CAP as directed. The CAP may be modified at any time up to completion or resolution after written approval of the premise of change from the Division. Failure to meet an adopted or revised adopted CAP to the Division's satisfaction within 120 days will result in immediate referral to the Performance Review Committee for consideration of further action against the Contractor.

The Division will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards or comply with a CAP, including consideration of sufficient time and associated costs as appropriate.

5. PERFORMANCE REVIEW COMMITTEE

The Performance Review Committee, in accordance with 43 TAC §9.24, will review at minimum all final evaluations, history of compliance with PRPs, any adopted CAPs including agreed modifications, any information about events outside a Contractor's control contributing to the Contractor's performance, and any documentation submitted by the Contractor and may recommend one or more of the following actions:

- take no action,
- reduce the Contractor's bidding capacity,
- prohibit the Contractor from bidding on one or more projects,
- immediately suspend the Contractor from bidding for a specified period of time, by reducing the Contractor's bidding capacity to zero, or
- prohibit the Contractor from being awarded a Contract on which they are the apparent low bidder.

The Deputy Executive Director will determine any further action against the Contractor.

6. APPEALS PROCESS

In accordance with 43 TAC §9.25, the Contractor may appeal remedial actions determined by the Deputy Executive Director.

Special Provision 000

Certificate of Interested Parties (Form 1295)

Submit a Form 1295, "Certificate of Interested Parties," in the following instances:

- at contract execution for contracts awarded by the Mobility Authority;
- at any time there is an increase of \$300,000 or more to an existing contract (change orders, extensions, and renewals); or
- at any time there is a change to the information in Form 1295, when the form was filed for an existing contract.

Form 1295 and instructions on completing and filing the form are available on the Texas Ethics Commission website.

Special Provision 000

Important Notice to Contractors



For Dollar Amount of Original Contract		Dollar Amount of Daily Contract Administration Liquidated Damages per Working Day
From More Than	To and including	
0	1,000,000	618
1,000,000	3,000,000	832
3,000,000	5,000,000	940
5,000,000	15,000,000	1317
15,000,000	25,000,000	1718
25,000,000	50,000,000	2411
50,000,000	Over 50,000,000	4265

In addition to the amount shown in Table 1, the Liquidated Damages will be increased by the amount shown in Item 8 of the General Notes for Road User Cost (RUC), when applicable.

Special Provision to Item 1

Abbreviations and Responsibilities

Item 1, "Abbreviations and Definitions," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 1. is supplemented with the following:

1.0. General Statement:

For this Contract, the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, November 1, 2014 (the "Texas Standard Specifications"), all documents referenced therein, and all manuals, bulletins, supplements, specifications, and similar materials issued by the Texas Department of Transportation ("TxDOT"), or any predecessor or successor thereto, which are applicable to this Contract, are hereby modified with respect to the terms cited below and no others are changed hereby.

The term "State", "State of Texas", "State Highway Agency", "State Highway Department Of Texas", "State Department of Highways and Public Transportation", "Texas State Department Of Highways and Public Transportation", "Texas Department of Transportation", "Department", "Texas Turnpike Authority", "State Department of Highways and Public Transportation Commission", "Texas Department of Transportation Commission", "Texas Transportation Commission", or "State Highway Commission", shall, in the use of The Texas Standard Specifications, Special Provisions and Special Specifications and General Notes and Specification Data pertaining thereto, and required contract provisions for Federal-Aid construction contracts, for all work in connection with Central Texas Regional Mobility Authority, projects and all extensions enlargements, expansions, improvements, and rehabilitations thereto, be deemed to mean Central Texas Regional Mobility Authority, unless the context clearly indicates a contrary meaning.

Article 2, "Abbreviations," is supplemented with the following:

CTRMA Central Texas Regional Mobility Authority

Article 3.28., "Commission", is voided and replaced by the following:

3.28. Commission. The Central Texas Regional Mobility Authority Board or authorized representative.

Article 3.32., "Construction Contract", is voided and replaced by the following:

3.32. Construction Contract. The agreement between the Central Texas Regional Mobility Authority and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract Documents.

Article 3.45., "Debar (Debarment)", is voided and replaced by the following:

3.45. Debar (Debarment). Action taken by the Mobility Authority, federal government or state government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a highway improvement Contract as defined in Transportation Code, Chapter 223, Subchapter A.

Article 3.47., "Department", is voided and replaced by the following:

3.47. Department. Central Texas Regional Mobility Authority, unless the context clearly indicates a contrary intent and meaning.

Article 3.48., "Departmental Material Specifications", is voided and replaced by the following:

3.48. Departmental Material Specifications (DMS). Reference specifications for various materials published by the Texas Department of Transportation Construction Division.

Article 3.54., "Engineer", is hereby deleted and replaced by the following:

3.54 Engineer. The Central Texas Regional Mobility Authority Coordinator or their duly authorized representative.

Article 3.73., "Letting Official", is hereby deleted and replaced by the following:

3.73. Letting Official. An employee of the Central Texas Regional Mobility Authority empowered by the Central Texas Regional Mobility Authority to officially receive bids and close the receipt of bids at a letting.

Article 3.79., "Manual of Testing Procedures", is voided and replaced by the following:

3.79. Manual of Testing Procedures. Texas Department of Transportation manual outlining test methods and procedures maintained by the Materials and Pavements Section of the Construction Division.

Article 3.102., "Proposal Form", is voided and replaced by the following:

3.012. Proposal Form. The document issued by the Central Texas Regional Mobility Authority for a proposed Contract that includes:

- the specific locations (except for non-site-specific work) and description of the proposed work;
- an estimate of the various quantities and kinds of work to be performed or materials to be furnished;
- a schedule of items for which unit prices are requested;
- the number of working days within which the work is to be completed (or reference to the requirements); and
- the special provisions and special specifications applicable to the proposed Contract.

Article 3.108., "Referee Tests", is voided and replaced by the following:

3.108. Referee Tests. Tests requested to resolve differences between Contractor and Engineer test results. The referee laboratory is the Texas Department of Transportation Construction Division Materials and Pavement Section, or mutually agreed to 3rd party commercial laboratory.

Article 3.129., "State", is voided and replaced by the following:

3.129. State. Central Texas Regional Mobility Authority.

3.156. Mobility Authority. The Central Texas Regional Mobility Authority, an agency created under Texas Transportation Code Chapter 370 and approved by the Texas Transportation Commission, together with its members, partners, employees, agents officers, directors, shareholders, representatives, consultants, successors, and assigns. The Mobility Authority's principal office is presently located at 3300 N. I-35, Suite 300, Austin, Texas 78705.

3.157. Bid Form. The form provided by the Mobility Authority used by the bidder to submit a bid. Electronic bid forms for the project shall be submitted via the project's CivCast website.

3.158. Full Completion of all Work (or to Fully Complete all Work). The completion of all work specified under this Contract as evidenced by the Formal Acceptance thereof by the Mobility Authority.

3.159. Standards. Whenever the Plans and/or Specifications refer to "Standard Sheets" or "Design Details" such reference shall be construed to mean the set of drawings issued by the Design Divisions, Texas Department of Transportation, and entitled "Standard Sheets". Only those standards or standard drawings specifically referred to by number on the Plans or in the various Contract Documents are applicable to work on this Contract.

Whenever in the various Contract Documents term, "Department" or "State" appears, it shall be replaced by the term, "Central Texas Regional Mobility Authority." Similarly, the term, "Executive Director" shall be replaced by the term, "Central Texas Regional Mobility Authority Coordinator".

Whenever in the Texas Department of Transportation Specifications and Standard Drawings the term, "Department" or "Texas Department of Transportation" appears, it shall be replaced by the term, "Central Texas Regional Mobility Authority," except in references to said Texas Department of Transportation as being the author of certain Specifications and Standard Drawings, and in reference to said Department as the agency prequalifying prospective Bidders.

Whenever in the Texas Department of Transportation Specifications and Standard Drawing the term, "District Engineer" appears, it shall be replaced by the term, "Central Texas Regional Mobility Authority Coordinator".

3.160. Substantial Completion. Substantial Completion shall be defined as occurring when all of the following conditions are met:

- All project work requiring lane or shoulder closures or obstructions is completed, and traffic is utilizing the lane arrangement as shown on the plans for the finished roadway.
- All signs, traffic control devices, and pavement markings are in their final position at this time.
- All sidewalks are opened for public use.

3.161. Provisional Award. Award given by the Mobility Authority to the Contractor after the Board of Directors approves the contract and is contingent on TxDOT approval. The Contractor is not required to provide bonds, insurance or their SBE Commitment Agreement Form.

Special Provision to Item 2

Instructions to Bidders

Item 2, "Instructions to Bidders" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2.3., "Issuing Proposal Forms," first two sentences are replaced with the following:

Mobility Authority will issue an Official Bid Form to a prequalified Bidders. The online bid form will be made available to the prequalified bidders on the CivcastUSA website: <https://www.civcastusa.com/project/6414830b90f39bab01e6584b/summary>

Prequalification requirements:

- Be registered with State of Texas,
- Be fully prequalified by Texas Department of Transportation (TxDOT),
- Have a bidding capacity per TxDOT prequalification system of \$2,500,000,
- Email a valid Non-Collusion Affidavit, Debarment Affidavit, and Child Support Statement to Zane.Reid@atkinsglobal.com and Carlos.Sepulveda@atkinsglobal.com and include a phone number, email address and physical address for point of contact.

Article 2.3., "Issuing Proposal Forms," is supplemented by the following:

The Department may not issue a proposal form if one or more of the following apply:

- The Contractor has been defaulted in accordance with Article 8.7., "Default of Contract" (a default for performance) on a previous Contract with the Department within the last 3 years
- The Contractor is not in compliance with Texas Government Code Sections 2155.089 and 2262.055.

Special Provision to Item 2

Instructions to Bidders



Item 2, "Instructions to Bidders," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2.3., "Issuing Proposal Forms," second paragraph, is supplemented by the following.

The Department will not issue a proposal form if one or more of the following apply:

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project, but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project.

Article 2.7., "Nonresponsive Bid," is supplemented by the following:

The Department will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the Bidder failed to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)."

Article 2.14., "Disadvantaged Business Enterprise (DBE)," is added.

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, they will be deemed nonresponsive and the proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Department may recommend that the Commission:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder submits DBE information within one calendar day of notification by the Department.

If the new apparent low Bidder is unable to submit the required DBE information within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the new apparent low Bidder's guaranty will not be forfeited,
- the Department will reject all bids, and
- the new apparent low Bidder will remain eligible to receive future proposals for the same project.

Special Provision to Item 2

Instructions to Bidders



Item 2, "Instructions to Bidders," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2.3., "Issuing Proposal Forms," is supplemented by the following:

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project, but was deemed nonresponsive for failure to register or participate in the Department of Homeland Security's (DHS) E-Verify system as specified in Article 2.15., "Department of Homeland Security (DHS) E-Verify System," is prohibited from rebidding that specific project.

Article 2.7., "Nonresponsive Bid," is supplemented by the following:

- the Bidder failed to participate in the Department of Homeland Security's (DHS) as specified in Article 2.15., "Department of Homeland Security (DHS) E-Verify System."

Article 2.15., "Department of Homeland Security (DHS) E-Verify System," is added.

The Department will not award a Contract to a Contractor that is not registered in the DHS E-Verify system. Remain active in E-Verify throughout the life of the contract. In addition, in accordance with paragraph six of Article 8.2, "Subcontracting," include this requirement in all subcontracts and require that subcontractors remain active in E-Verify until their work is completed.

If the apparent low Bidder does not appear on the DHS E-Verify system prior to award, the Department will notify the Contractor that they must submit documentation showing that they are compliant within 5-business days after the date the notification was sent. A Contractor who fails to comply or respond within the deadline will be declared non-responsive and the Department will execute the proposal guaranty. The proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the scope of the work.

The Department may recommend that the Commission:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the Department is able to verify the Bidder's participation in the DHS E-verify system. For the Bidder who is not registered in E-Verify, the Department will allow for one business day after notification to provide proof of registration.

If the Department is unable to verify the new apparent low Bidder's participation in the DHS E-Verify system within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the new apparent low Bidder's guaranty will not be forfeited,
- the Department will reject all bids, and
- the new apparent low Bidder will remain eligible to receive future proposals for the same project.

Special Provision to Item 3

Award and Execution of Contract

Item 3, "Award and Execution of Contract" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 1, "Award of Contract," is deleted in its entirety and replaced with the following:

The Mobility Authority will award or reject the Contract within 60 calendar days after the opening of the proposal at the sole discretion of the Mobility Authority.

Article 4.3., "Insurance," is supplemented by the following:

The Contractor shall be the named insured, and the following entities shall be additional insureds on a primary and non-contributory basis: Central Texas Regional Mobility Authority, Texas Department of Transportation.

These entities shall be additional insureds to this policy with respect to liability arising out of the acts, errors, and omissions of any member of the Contractor and Subcontractors whether occurring on or off of the site, notwithstanding any other provisions of the Contract Documents, the project policy shall not be canceled, except for non-payment of premium, fraud, material misrepresentation, or noncompliance with reasonable loss control recommendations.

The Authority Board, the Authority, Texas Department of Transportation, the State of Texas, the Commission and their respective successors, assigns, officeholders, officers, directors, commissioners, consultants and employees shall be listed as "additional insureds" with respect to any insurance for which the contractor must obtain an "additional insured" rider or amendment.

Table 2 is deleted in its entirety and replaced with the following:

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Including products/completed operations liability and contractual liability , in the amount of \$1,000,000 per occurrence for bodily injury and property damage
Business Automobile Policy	In the amount of \$1,000,000 per occurrence for bodily injury and property damage
Workers' Compensation	Providing statutory benefits, and Employers Liability with limits of \$1,000,000
Excess Liability Insurance	In the amount of \$5,000,000 per occurrence and aggregate

Special Provision to Item 4

Scope of Work

Item 4, "Scope of Work," of the Standard Specifications, is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 4.4., "Changes in the Work," Delete the following paragraph:

"If the changes in quantities or the alternations do not significantly change the character of the work under the Contract, the altered work will be paid for at the Contract unit price. If the changes in quantities or the alterations significantly change the character of the work, the Contract will be amended by a change order. If no unit price exists, this will be considered extra work and the Contract will be amended by a change order. Provide cost justification as requested, in an acceptable format. Payment will not be made for anticipated profits on work that is eliminated."

and replace with the following:

"The Engineer may require deviations to the Work through a written directive. Payment for the deviations and quantity overruns will be made through the Contingency Allowance. Deviations and quantity overruns will be paid for at the unit prices submitted at the bidding stage. Deviations requiring new unit prices will be negotiated and made through the Contingency Allowance. Costs exceeding the Contingency Allowance will be addressed using the change order process.

Upon completion of the Work, the total contract value will be adjusted to provide for the difference, if any, between the total amount of expenditures from the Contingency Allowance and the original amount of the Contingency Allowance. The Contractor is not entitled to all or any part of an unexpended balance of the Contingency Allowance.

When changes are made that do not fall under the Contingency Allowance, the Contract will be amended by a Change Order. Provide cost justification as requested, in an acceptable format. Payment will not be made for anticipated profits on work that is eliminated."

Article 4.6., "Requests for Additional Compensation and Damages," is supplemented by the following:

"Contractor shall not be eligible for Change Order(s) for additional compensation for additional costs, including costs for developing and executing a Recovery Schedule(s), and delay and disruption damages, or additional Days incurred directly or indirectly from the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the disease known as COVID-19, including any disruptions to, and delays or interruptions in, construction of the Project in accordance with the Contract and any approved Baseline Schedule."

Special Provision to Item 5

Control of the Work



Item 5, "Control of the Work," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 5.1, "Authority of Engineer," is voided and replaced by the following.

The Engineer has the authority to observe, test, inspect, approve, and accept the work. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

The Engineer will pursue and document actions against the Contractor as warranted to address Contract performance issues. Contract remedies include, but are not limited to, the following:

- conducting interim performance evaluations requiring a Project Recovery Plan, in accordance with Title 43, Texas Administrative Code (TAC) §9.23,
- requiring the Contractor to remove and replace defective work, or reducing payment for defective work,
- removing an individual from the project,
- suspending the work without suspending working day charges,
- assessing standard liquidated damages to recover the Department's administrative costs, including additional project-specific liquidated damages when specified in the Contract in accordance with 43 TAC §9.22,
- withholding estimates,
- declaring the Contractor to be in default of the Contract, and
- in case of a Contractor's failure to meet a Project Recovery Plan, referring the issue directly to the Performance Review Committee for consideration of further action against the Contractor in accordance with 43 TAC §9.24.

The Engineer will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards, including consideration of sufficient time.

Follow the issue escalation ladder if there is disagreement regarding the application of Contract remedies.

Special Provision to Item 5

Control of the Work



Item 5, "Control of the Work" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 5.4, "Coordination of Plans, Specifications, and Special Provisions," the last sentence of the last paragraph is replaced by the following:

Failure to promptly notify the Engineer will constitute a waiver of all contract claims against the Department for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies.

Special Provision to Item 6

Control of Materials

For this project, Item 6, "Control of Materials," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 1., "Source Control," is supplemented by the following:

The use of convict-produced materials is prohibited per 23 CFR 635.417.

There shall be no local preference for the purchasing of materials.

Article 4., "Sampling, Testing, and Inspection," is supplemented by the following:

Quality Control testing of all materials, construction items, or products incorporated in the work shall be performed by the Contractor according to the contract specifications at the Contractor's expense.

Quality Assurance sampling and testing for acceptance will be performed by the Mobility Authority's Construction Representative/Observer in accordance with the Quality Control (QC) / Quality Assurance (QA) program outlined in the Quality Assurance Plan (QAP). The cost of such tests will be incurred by the Mobility Authority and coordinated by the Mobility Authority's Construction Representative/Observer through funds made available to the Construction Representative/Observer under his/her agreement with the Mobility Authority for the professional services related to construction engineering and inspection on the Project.

Special Provision to Item 7

Legal Relations and Responsibilities

Item 7, "Legal Relations and Responsibilities" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 7.3., "Laws To Be Observed", Article 7.5., "Patented Devices", Article 7.12., "Responsibility For Hazardous Materials", and Article 7.15., "Responsibility For Damage Claims", "State" is voided and replaced by "Central Texas Regional Mobility Authority and TxDOT".

Article 7.3., "Laws To Be Observed," is supplemented by the following:

By entering into Contract, the Contractor agrees to provide or make available to the Department records, including electronic records related to the Contract for a period of 3 years after the final payment. No person or entity other than TxDOT may claim third -party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

Article 7.15., "Responsibility For Damage Claims," the last paragraph is deleted and not replaced.

Special Provision to Item 7

Legal Relations and Responsibilities



Item 7, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 7.7.2., "Texas Pollutant Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3)," is voided and replaced by the following:

7.2. Texas Pollution Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3).

7.2.1. Projects with less than one acre of soil disturbance including required associated project specific locations (PSL's) per TPDES GP TXR 150000.

No posting or filing will be required for soil disturbances within the right of way. Adhere to the requirements of the SWP3.

7.2.2. Projects with one acre but less than five acres of soil disturbance including required associated PSL's per TPDES GP TXR 150000.

The Department will be considered a primary operator for Operational Control Over Plans and Specifications as defined in TPDES GP TXR 150000 for construction activity in the right of way. The Department will post a small site notice along with other requirements as defined in TPDES GP TXR 150000 as the entity of having operational control over plans and specifications for work shown on the plans in the right of way.

The Contractor will be considered a Primary Operator for Day-to-Day Operational Control as defined in TPDES GP TXR 150000 for construction activity in the right of way. In addition to the Department's actions, the Contractor will post a small site notice along with other requirements as defined in TPDES GP TXR 150000 as the entity of having day-to-day operational control of the work shown on the plans in the right of way. This is in addition to the Contractor being responsible for TPDES GP TXR 150000 requirements for on- right of way and off- right of way PSL's. Adhere to all requirements of the SWP3 as shown on the plans. The Contractor will be responsible for Implement the SWP3 for the project site in accordance with the plans and specifications, TPDES General Permit TXR150000, and as directed.

7.2.3. Projects with 5 acres or more of soil disturbance including required associated PSL's per TPDES GP TXR 150000.

The Department will be considered a primary operator for Operational Control Over Plans and Specifications as defined in TPDES GP TXR 150000 for construction activities in the right of way. The Department will post a large site notice, file a notice of intent (NOI), notice of change (NOC), if applicable, and a notice of termination (NOT) along with other requirements per TPDES GP TXR 150000 as the entity having operational control over plans and specifications for work shown on the plans in the right of way.

The Contractor will be considered a primary operator for Day-to-Day Operational Control as defined in TPDES GP TXR 150000 for construction activities in the right of way. In addition to the Department's actions, the Contractor shall file a NOI, NOC, if applicable, and NOT and post a large site notice along with other requirements as the entity of having day-to-day operational control of the work shown on the plans in the right of way. This is in addition to the Contractor

being responsible for TPDES GP TXR 150000 requirements for on- right of way and off- right of way PSL's. Adhere to all requirements of the SWP3 as shown on the plans.

Special Provision to Item 7

Legal Relations and Responsibilities



Item 7, "Legal Relations and Responsibilities" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 19.1., Minimum Wage Requirements for Federally Funded Contracts. The second paragraph is voided and replaced by the following:

Submit electronic payroll records to the Engineer using the Department's payroll system.

Section 19.2., Minimum Wage Requirements for State Funded Contracts. The second paragraph is voided and replaced by the following:

Submit electronic payroll records to the Engineer using the Department's payroll system.

Special Provision to Item 7

Legal Relations and Responsibilities



Item 7, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 7.2.4., "Public Safety and Convenience." The first paragraph is deleted and replaced by the following.

Ensure the safety and convenience of the public and property as provided in the Contract and as directed. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel. Manage construction to minimize disruption to traffic. Maintain the roadway in a good and passable condition, including proper drainage and provide for ingress and egress to adjacent property.

If the construction of the project requires the closing of a highway, as directed, coordinate the closure with the Engineer and work to ensure all lanes and ramps possible are available during peak traffic periods before, during, and after significant traffic generator events to avoid any adverse economic impact on the municipalities during:

- dates or events as shown on the plans, and
- other dates as directed.

Special Provision to Item 007

Legal Relations and Responsibilities



Item 7, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below.

Section 2.6., "Barricades, Signs, and Traffic Handling," the first paragraph is voided and replaced by the following:

- 2.6. **Barricades, Signs, and Traffic Handling.** Comply with the requirements of Item 502 "Barricades, Signs, and Traffic Handling," and as directed. Provide traffic control devices that conform to the details shown on the plans, the TMUTCD, and the Department's Compliant Work Zone Traffic Control Device List maintained by the Traffic Safety Division. When authorized or directed, provide additional signs or traffic control devices not required by the plans.

Section 2.6.1., "Contractor Responsible Person and Alternative," is voided and replaced by the following:

- 2.6.1. **Contractor Responsible Person and Alternative.** Designate in writing, a Contractor's Responsible Person (CRP) and an alternate to be the representative of the Contractor who is responsible for taking or directing corrective measures regarding the traffic control. The CRP or alternate must be accessible by phone 24 hr. per day and able to respond when notified. The CRP and alternate must comply with the requirements of Section 2.6.5., "Training."

Section 2.6.2, "Flaggers," the first paragraph is voided and replaced by the following:

- 2.6.2. **Flaggers.** Designate in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Certify to the Engineer that all flaggers will be trained and make available upon request a list of flaggers trained to perform flagging duties.

Section 2.6.5, "Training," is voided and replaced by the following:

- 2.6.5. **Training.** Train workers involved with the traffic control using Department-approved training as shown on the "Traffic Control Training" Material Producer List.

Coordinate enrollment, pay associated fees, and successfully complete Department-approved training or Contractor-developed training. Training is valid for the period prescribed by the provider. Except for law enforcement personnel training, refresher training is required every 4 yr. from the date of completion unless otherwise specified by the course provider. The Engineer may require training at a frequency instead of the period prescribed based on the Department's needs. Training and associated fees will not be measured or paid for directly but are considered subsidiary to pertinent Items.

Certify to the Engineer that workers involved in traffic control and other work zone personnel have been trained and make available upon request a copy of the certification of completion to the Engineer. Ensure the following is included in the certification of completion:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

Where Contractor-developed training or a Department-approved training course does not produce a certification, maintain a log of attendees. Make the log available upon request. Ensure the log is legible and includes the following:

- printed name and signature of participant,
- name and title of trainer, and
- date of training.

2.6.5.1. **Contractor-developed Training.** Develop and deliver Contractor-developed training meeting the minimum requirements established by the Department. The outline for this training must be submitted to the Engineer for approval at the preconstruction meeting. The CRP or designated alternate may deliver the training instead of the Department-approved training. The work performed and materials furnished to develop and deliver the training will not be measured or paid for directly but will be considered subsidiary to pertinent Items.

2.6.5.1.1. **Flagger Training Minimum Requirements.** A Contractor's certified flagging instructor is permitted to train other flaggers.

2.6.5.1.2. **Optional Contractor-developed Training for Other Work Zone Personnel.** For other work zone personnel, the Contractor may provide training meeting the curriculum shown below instead of Department-approved training.

Minimum curriculum for Contractor-provided training is as follows:

Contractor-developed training must provide information on the use of personnel protection equipment, occupational hazards and health risks, and other pertinent topics related to traffic management. The type and amount of training will depend on the job duties and responsibilities. Develop training applicable to the work being performed. Develop training to include the following topics.

- The Life You Save May Be Your Own (or other similar company safety motto).
- Purpose of the training.
 - It's the Law.
 - To make work zones safer for workers and motorist.
 - To understand what is needed for traffic control.
 - To save lives including your own.
- Personal and Co-Worker Safety.
 - **High Visibility Safety Apparel.** Discuss compliant requirements; inspect regularly for fading and reduced reflective properties; if night operations are required, discuss the additional and appropriate required apparel in addition to special night work risks; if moving operations are underway, discuss appropriate safety measures specific to the situation and traffic control plan.
 - **Blind Areas.** A blind area is the area around a vehicle or piece of construction equipment not visible to the operators, either by line of sight or indirectly by mirrors. Discuss the "Circle of Safety" around equipment and vehicles; use of spotters; maintain eye contact with equipment operators; and use of hand signals.
 - **Runovers and Backovers.** Remain alert at all times; keep a safe distance from traffic; avoid turning your back to traffic and if you must then use a spotter; and stay behind protective barriers, whenever possible. Note: It is not safe to sit on or lean against a concrete barrier, these barriers can deflect four plus feet when struck by a vehicle.
 - Look out for each other, warn co-workers.
 - Be courteous to motorists.
 - Do not run across active roadways.
 - Workers must obey traffic laws and drive courteously while operating vehicles in the work zones.
 - Workers must be made aware of company distracted driving policies.
- **Night Time Operations.** Focus should be placed on projects with a nighttime element.

- **Traffic Control Training.** Basics of Traffic Control.
 - Identify work zone traffic control supervisor and other appropriate persons to report issues to when they arise.
 - Emphasize that work zone traffic control devices must be in clean and in undamaged condition. If devices have been hit but not damaged, put back in their correct place and report to traffic control supervisor. If devices have been damaged, replace with new one and report to traffic control supervisor. If devices are dirty, faded or have missing or damaged reflective tape clean or replace and report to traffic control supervisor. Show examples of non-acceptable device conditions. Discuss various types of traffic control devices to be used and where spacing requirements can be found.
 - **Channelizing Devices and Barricades with Slanted Stripes.** Stripes are to slant in the direction you want traffic to stay or move to; demonstrate this with a device.
 - **Traffic Queuing.** Workers must be made aware of traffic queuing and the dangers created by it. Workers must be instructed to immediately notify the traffic control supervisor and other supervisory personnel if traffic is queuing beyond advance warning sign and devices or construction limits.
 - **Signs.** Signs must be straight and not leaning. Report problems to the traffic control supervisor or other as designated for immediate repair. Covered signs must be fully covered. If covers are damaged or out of place, report to traffic control supervisor or other as designated.

Special Provision to Item 8

Prosecution and Progress

Item 8, "Prosecution and Progress," of the Standard Specifications, is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 8.5., "Project Schedules" is supplemented by the following

The progress schedule required for this project is the critical path method schedule (CPM schedule) as described herein. The Contractor shall prepare and submit for review and acceptance a cost loaded schedule of proposed working progress for the entire contract duration. The Engineer will provide a template with milestones from other contracts and non-construction activities for the Contractor to use in the development of their schedule. The Engineer shall also provide a Work Breakdown Structure (WBS) as well as the required report layouts for the Contractor to use to develop the progress schedule for this Contract.

Immediately after receipt of notice of award, the Division Engineer and the Contractor will establish a mutually agreeable date on which the preconstruction meeting will be held. The Contractor's project superintendent and other individuals representing the Contractor who are knowledgeable of the Contractor's proposed progress schedule or who will be in charge of major items of the work shall attend the preconstruction conference.

After work on the project has begun, construction conferences will be held periodically. The construction conferences are to be scheduled at times that are mutually agreeable to both the project superintendent and the Resident Engineer. It shall be the superintendent's responsibility to attend the conferences.

Section 8.5.2 "Progress Schedule" is supplemented by the following:

The Contractor shall provide a schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Original Contract Completion Date and any interdependent milestones identified by the Engineer or required by Contract. Show the order and interdependence of activities and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress of each activity.

Section 8.5.3 "Schedule Format" is supplemented by the following:

The Contractor shall use a compatible version of Oracle Primavera P6 or comparable scheduling software to generate the CPM schedule. It is the Contractor's responsibility to verify with the Engineer the software and version being used for this project and shall maintain the required version for the entire contract duration. The use of Microsoft Project and Primavera Project Planner (P3) and other scheduling software is prohibited.

The progress schedule shall contain the following Administrative Identifier Information:

- (1) Project Name
- (2) Contract Number
- (3) Date of Contract
- (4) Construction Completion Date
- (5) Contractor's Name
- (6) Contractor's Contact Information

The CPM schedule must reflect the scope of work and include the following:

- (1) Clear identification of tasks to be completed based on Section or Special Provisions included in the Project Manual and as listed in Pay Items, including subcontractor work activities.
- (2) Include calculations of resources required (Cost, Labor, Equipment) for constructing all facilities within the Contract duration. Specific calculations shall be provided to show quantities, manpower / crews, and equipment to support the critical path. The Contractor shall be capable of calculating the maximum crew size anticipated if any activities become critical, so the Contractor is prepared when a critical path changes or a new path occurs.
- (3) Float for each Activity.
- (4) Activities for submittals (shop drawings).
- (5) Punchlist activities with sufficient duration for the Engineer's inspection and acceptance before the final completion date
- (6) Activities for submittal review time by the Engineer, including time range showing start and end dates.
- (7) Working and shop drawing preparation, submittal, and review for acceptance.
- (8) Material and equipment procurement, fabrication and delivery; identify any long lead items as separate activities.
- (9) Owner furnished and/or installed materials and equipment shall be identified as separate activities.
- (10) NTP / Start of construction
- (11) Required phasing
- (12) Maintenance of traffic requirements as required by the contract (if any)
- (13) Intermediate completion dates (if any)
- (14) Identified interdependent milestones (if any)
- (15) Seasonal limitation/observation periods/moratoriums
- (16) Beginning and end of each traffic control work area and road openings
- (17) Other similar activities and project milestones established in the Contract Documents.
- (18) Substantial Completion Date
- (19) Final Acceptance Date
- (20) All required Reports layouts as requested by the Engineer

Section 8.5.4 "Activity Format" is supplemented by the following:

Activity requirements are discussed in further detail as follows:

- (1) Activity Identification (ID) - Assign each activity a unique identification number. The format for the identification number will be provided by the Engineer. All activities must begin with the same activity ID prefix as provided by the Engineer.
- (2) Activity Description - Assign each activity an unambiguous descriptive word or phrase. For example, use "Excavate Area A," not "Start Excavation."
- (3) Activity Codes – The Engineer will provide the activity code dictionary in the template. The Contractor will assign the appropriate codes to each activity.
- (4) Activity Original Duration - Assign a planned duration in working days for each activity. Do not exceed a duration of 10 working days for any activity unless accepted by the Engineer. Each activity shall have a minimum duration of 1 working day. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.
- (5) Finish-to-Start Relationships - Unless allowed in writing by the Engineer, use only finish-to-start relationships with no leads or lags to link activities. All activities, except the first activity, shall have a predecessor(s). All activities, except the final activity, shall have a successor(s).
- (6) Calendars – The Engineer will provide pre-defined calendars as part of the template. The Contractor shall assign these pre-defined calendars to the appropriate activities. The Contractor may create new projectspecific

- calendars to represent their standard work schedule using the pre-defined calendars as a basis. The Contractor may not edit pre-defined calendars.
- (7) Constraints – Unless allowed in writing by the Engineer, do not use constraints in the schedule.
 - (8) Resources – Manpower and equipment shall be reflected for all activities. Incidental costs to construction shall be equally spread out across all activities. Front loaded schedules are not allowed.
 - (9) The schedule shall show the total cost of performing each activity and shall include the total labor, material, equipment and general conditions.
 - (10) The sum of cost for all activities shall equal the total Contract.
 - (11) The summed value of that portion of the activities allocated to each Contract bid item shall equal the total value of the corresponding Contract bid item.
 - (12) The Contractor shall allocate a value for unit price or lump sum contract bid items to each activity in the schedule. No Lump sum amounts should exceed \$100,000.

Section 8.5.5.2 “Critical Path Method” The first paragraph is voided and replaced by the following:

The Contractor shall submit the baseline CPM schedule in a bar chart format showing the critical path in red, using both hard copy and in electronic formats. Electronic formats shall be compatible with the Engineer’s computer systems. Also, submit the following information:

- (1) Written narrative – Explains the sequence of work, the controlling operations, intermediate completion dates, milestones, project phasing, anticipated work schedule and estimated resources. In addition, explain how permit requirements, submittal tracking and coordination with subcontractors, utility companies, railroads and other third party entities will be performed. The narrative shall itemize and describe the critical path (i.e. access limitations, constraints, shift work), and compare early and late date or Contract Milestone activities, and describe any critical resources.
- (2) CPM Schedule in a Bar Chart Format – Include the Administrative Identifier Information discussed above on the first page of the schedule. For each activity on the chart, indicate the Activity ID, Activity Description, Original Duration, Remaining Duration, Changes to Duration, Total Float, Early Start Date, Early Finish Date, and Calendar Name. Use arrows to show the relationships among activities.
- (3) Identify the critical path of the project on the bar chart. The critical path is defined as; 1) the sequence of activities that must be completed “on time” to ensure that the project finished on time. 2) the longest path of activities in the project that determines the project finish date.
- (4) No more than 10% of activities may be critical or near critical. Critical Activities will have a total float equal to zero. “Near critical” is defined as float in the range of 1 to 10 working days.
- (5) Six Week Look Ahead CPM Schedule in a Bar Chart Format – This schedule will have all the same requirements of the CPM schedule in bar chart format except that it shall be limited to those activities that have an early start or early finish within a six-week period of the data date.
- (6) Logic Diagram – Submit a diagram in PERT chart format showing the logic of the CPM schedule.
- (7) Activity ID Sort – Submit a listing of all activities included in the CPM schedule sorted by ascending Activity Identification Number.
- (8) Total Float Sort – Submit a listing of all activities included in the CPM schedule sorted by increasing total float and by early start date.
- (9) All float belongs to the Project and is a shared commodity between the Contractor and the Mobility Authority and is not for the exclusive use or benefit of either party. The Contractor shall notify the Engineer in writing for acceptance before using any float.
- (10) Detailed Predecessor/Successor Sort – Submit a listing of all activities included in the CPM schedule indicating the activities that immediately precede and immediately succeed that activity in the schedule logic.
- (11) Scheduling Statistics Report – Submit a report of CPM schedule statistics, including number of activities, number of activities on the longest path, number of started activities, number of completed activities, number of relationships, percent complete, and number and type of constraints.

- (12) A resource curves / Metric tracking reports (EVM) corresponding to the milestones and work activities established above.

Section 8.5.5.2.2 “Baseline Schedule” The second paragraph is voided and replaced by the following:

The Contractor shall submit a progress schedule for the entire duration of the Contract to the Engineer 30 calendar days following the contract award date. After review of the schedule the Engineer shall schedule a Baseline CPM Schedule meeting with the Contractor to review the schedule and identify any changes or corrections. Within 7 calendar days of the CPM Schedule meeting, the Contractor shall make any necessary adjustments to address all review comments and resubmit network diagrams and reports for the Engineer’s review. The complete baseline schedule shall be submitted and accepted no later than (45) forty-five days after contract award date. The complete progress schedule shall be accepted by the Engineer before any payments will be processed for the project.

Section 8.5.5.2.3 “Progress Schedule” is supplemented by the following

The Engineer may withhold pay estimates if the updated CPM schedule is not submitted as required by this section. For each updated CPM schedule, identify the actual start and finish dates for all completed activities, the actual start date and remaining duration for all activities in progress, the difference in duration of all activities since the last update and any exceptional reports associated with the update. Only accepted changes will be incorporated into the monthly progress schedule update. The schedule should represent the actual work performed and should be progressed with actuals for all the schedule activities. The final schedule will be utilized as the project actual “As Built” schedule.

Provide a written narrative that identifies any changes or shifts in the critical path and submit reasons for the changes or shifts in the critical path. Identify any changes in logic for the updated CPM schedule and submit reasons for changes to the schedule logic. In addition to the written narrative, submit the following with each updated CPM schedule:

- (1) CPM Schedule in Bar Chart Format
- (2) Four Week Look Ahead CPM Schedule in Bar Chart Format
- (3) Logic Diagram
- (4) Activity ID Sort
- (5) Total Float Sort
- (6) Detailed Predecessor/Successor Sort
- (7) Schedule Metrics and Earned Value (Schedule, Cost, Labor) Reports

The Contractor must submit a statement that there were no changes in the schedule logic, activity durations, or calendars since the previous update in lieu of submission of items (3), (5), and (6). Acceptance of schedule updates by the Engineer does not revise the Contract Documents.

A monthly schedule update meeting shall be held each month following Notice to Proceed to review monthly schedule update submittals, critical path items and recovery schedules. The Contractor shall be represented in the meeting by the Contractor’s scheduler, project manager and general superintendent. As necessary the Contractor may be also asked to attend a coordination meeting to discuss the schedule impacts to other contractors.

If the Project completion date changes or if the project schedule overrun is anticipated to exceed 5%, the Contractor shall submit a revised progress schedule to the Engineer for review and acceptance. If plan revisions are anticipated to change the sequence of construction in such a manner as will affect the progress, but not the completion date, then the Contractor may submit a revised progress schedule for review and acceptance. The Project completion date shall remain unchanged.

Section 8.5.5.3 “Notice of Potential Time Impact” is supplemented by the following

“Contractor shall not be eligible for Change Order(s) for additional compensation for additional costs, including costs for developing and executing a Recovery Schedule(s), and delay and disruption damages, or additional Days incurred directly or indirectly from the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the disease known as COVID-19, including any disruptions to, and delays or interruptions in, construction of the Project in accordance with the Contract and any approved Baseline Schedule.”

Section 8.5.5 "Schedule Types" is supplemented by the following:

Section 8.5.5.5 Recovery Schedule

If the progress schedule projects a finish date for the Project beyond the original Completion Date, the Contractor shall submit a revised schedule showing a plan to finish by the original Completion Date. The Mobility Authority will withhold Pay Estimates until the Engineer accepts the revised schedule. No additional compensation for developing and executing a recovery schedule(s) shall be reimbursed to the Contractor. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor.

- (1) In the event Work or related construction activities shown on the Contractor's Progress Schedule fall behind schedule to the extent that dates established as contractual Completion Dates are in jeopardy, the Contractor shall prepare and submit to the Engineer, at no additional cost or time to the Mobility Authority, a Recovery Schedule showing intent to remedy delays and to regain originally scheduled time of completion of Work within a timely manner. This includes delays due to unforeseen conditions.
- (2) Recovery Schedule shall be submitted in such form and detail appropriate to the delay or delays, explaining and displaying how the Contractor intends to reschedule those activities and reestablish compliance with the accepted baseline Construction Progress Schedule during the immediate subsequent pay period or as permitted by Engineer. This shall include a schedule diagram comparing the original and the revised sequence of activities, identifying all affected activities.
- (3) Upon determining the requirement for a Recovery Schedule:
 - a. Within five (5) calendar days, the Contractor shall present to Engineer a proposed Recovery Schedule. The Recovery Schedule shall represent the Contractor's best judgment as to how to best reorganize the Work and achieve progress to comply with the accepted Construction Progress Schedule.
 - b. Changes to Contractor's means and methods, such as increased labor force, working hours, overtime, additional equipment and other means shall not constitute the basis for changes to the Contract Sum or Contract Time.
 - c. Recovery Schedule shall show remedies to bring Work back on schedule up-to-date within the immediate subsequent pay period.
 - d. The Recovery Schedule shall be prepared to a similar level of detail as the Construction Progress Schedule.
 - e. Five (5) calendar days prior to the expiration of the Recovery Schedule, Contractor shall document to the Engineer that the Work schedule has regained, or is on-track to regain, compliance with the Construction Progress Schedule.
- (4) Failure to submit Recovery Schedule in a timely manner may result in Termination of the Contract for Cause as determined by the Engineer.
- (5) Failure to achieve compliance with the accepted Construction Progress Schedule despite implementing Recovery Schedule may result in Termination of the Contract for Cause as determined by the Engineer.
- (6) Termination of Contract For Cause: In the event Contractor defaults on the terms of the Contract, including failure to maintain the Construction Progress Schedule, Engineer will assess the level of completion of the Work achieved by the Contractor and compare amount of available funds against anticipated costs required for the Mobility Authority to complete the Work, including anticipated Liquidated Damages resulting from delay, if any. Engineer will determine amount of payment due to Contractor for Work completed prior to date of Termination of Contract for Cause, if any. In the event available funds are not sufficient for the Mobility Authority to complete the Work, the Mobility Authority will withhold such funds from the amount due the Contractor.
- (7) If, in the opinion of the Engineer, the Contractor has sufficiently regained compliance with the Construction Progress Schedule, the use of the Construction Progress Schedule will be resumed. Contractor shall update and submit the Construction Progress Schedule clearly identifying Work to date and how the Contractor intends to achieve timely completion for the remainder of the Work in accordance with the Construction Documents.

Special Provision to Item 8 Prosecution and Progress



Item 8, "Prosecution and Progress" of the Standard Specification is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 8.2., "Subcontracting," is supplemented by the following paragraph, which is added as paragraph six to this article:

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is not registered in the Department of Homeland Security's (DHS) E-Verify system. Require that all subcontractors working on the project register and require that all subcontractors remain active in the DHS E-Verify system until their work is complete on the project.

Special Provision to Item 8 Prosecution and Progress



Item 8, "Prosecution and Progress" of the Standard Specifications is amended with respect to the clause cited below. No other clauses or requirements of this Item are waived or changed.

Article 8.7.2., "Wrongful Default," is revised and replaced by the following:

If it is determined after the Contractor is declared in default, that the Contractor was not in default, the rights and obligations of all parties will be the same as if termination had been issued for the convenience of the public as provided in Article 8.8 "Termination of Contract."

Special Provision to Item 9

Measurement and Payment

Item 9, "Measurement and Payment," of the Standard Specifications, is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 9.5., "Progress Payments," Delete this section of the Specifications in its entirety and substitute with the following:

Partial payments will be made once each month covering work performed and materials complete-in-place in accordance with the Contract. The invoice form to be submitted each month will be provided to the Contractor in Microsoft Excel format. The Contractor must be able to use Microsoft Excel to complete the invoice form. Partial payments will be made on the value of work performed based on approximate estimates prepared by the Engineer, provided, however, that no estimate shall be certified or payment made where the net amount receivable by the Contractor is less than Five-hundred Dollars (\$500.00).

The Engineer will review the partial payment estimate with the Contractor's representative prior to each partial payment.

Total Contract value shall be considered to mean the original amount of the Contract, except when the Contract is increased or decreased by a supplemental agreement in which case the adjusted total shall be used.

The Mobility Authority reserves the right to withhold the payment of any partial or final estimate voucher or any sum or sums thereof from such vouchers in the event of the failure of the Contractor to promptly make payment to all persons supplying equipment, tools or materials, or for any labor used by the Contractor in the prosecution of the work provided for in the Contract, and for any other cause as determined by the Mobility Authority in its sole discretion, including overpayment on previous partial payments.

Article 9.8., "Retainage," is supplemented with the following:

The Mobility Authority shall not withhold funds from payments to be made to Contractor for the Work until such time as 95% of the Adjusted Contract Price has been paid to the Contractor. Following completion of and payment for 95% of the Adjusted Contract Price, the Mobility Authority shall withhold, the remaining 5% of the Adjusted Contract Price pursuant to the terms described below.

The remaining 5% for the Work, subject to reduction as specified below, shall be held by the Mobility Authority until Final Acceptance. At such time, and provided the Contractor is not in breach or default hereunder, the Mobility Authority shall release to Contractor all withheld in connection with the Work other than amounts applied to the payment of Losses or which the Mobility Authority deems advisable, in its sole discretion, to retain to cover any existing or threatened claims. The Contractor must further warrant, to the satisfaction of the Mobility Authority, that there are no outstanding claims or liens by any subcontractors or other parties with respect to the Work.

The prime contractor shall make full payment of amounts due to subcontractors within 10 calendar days following the satisfactory completion of the subcontractor's work. Satisfactory completion of the subcontractor's work shall be defined as approval, acceptance, and payment for the subcontractor's work by the Mobility Authority including the submittal and acceptance of all information, deliverables or other documents required by the contract.

Prior to the release of the remaining 5% by the Mobility Authority pursuant to the terms hereof, such amounts shall be held by the Mobility Authority. Upon the release of the remaining 5%, the Contractor shall not be entitled to any interest income that has accrued upon the amounts of the remaining 5% released to Contractor.

Article 9.9., "Payment Provisions for Subcontractors," is supplemented with the following:

The Mobility Authority may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

Special Provision to Item 009

Measurement and Payment



Item 009 "Measurement and Payment" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 9.5., "PROGRESS PAYMENTS" is supplemented with the following:

It is the Department's desire to pay a Contractor for work through the last working day of the month; however, the use of early cut-off dates for monthly estimates and MOH is a project management practice to manage workload at the Area Office level. Approval for using early cut-off dates is at the District's discretion. The earliest cut-off date for estimates is the 25th of the month.

Article 9.6., "PAYMENT FOR MATERIAL ON HAND (MOH)" first paragraph is amended as follows:

If payment for MOH is desired, request compensation for the invoice cost of acceptable nonperishable materials that have not been used in the work before the request, and that have been delivered to the work location or are in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Include only materials that have been sampled, tested, approved, or certified, and are ready for incorporation into the work. Only materials which are completely constructed or fabricated on the Contractor's order for a specific Contract and are so marked and on which an approved test report has been issued are eligible. Payment for MOH may include the following types of items: concrete traffic barrier, precast concrete box culverts, concrete piling, reinforced concrete pipe, and illumination poles. Any repairs required after fabricated materials have been approved for storage will require approval of the Engineer before being made and will be made at the Contractor's expense. Include only those materials and products, when cumulated under an individual item or similar bid items, that have an invoice cost of at least \$1,000 in the request for MOH payment (e.g. For MOH eligibility, various sizes of conductor are considered similar bid items and may be cumulated to meet the threshold; for small roadside signs, the sign supports, mounting bolts, and the sign face is considered one bid item or similar bid items for more than one pay item for sign supports.) Requests for MOH are to be submitted at least two days before but not later than the estimate cutoff date unless otherwise agreed. If there is a need to request MOH after the established cut-off date, the district can make accommodation as the need arises. This needed accommodation is to be the exception, though, and not the rule.

Special Provision to Item 9 Measurement and Payment



Item 9, "Measurement and Payment" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 9.7.1.4.3., "Standby Equipment Costs," is voided and replaced by the following:

7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9.7.1.4., "Equipment," except that the 15% markup will not be allowed and that:

Section 7.1.4.3.1., "Contractor-Owned Equipment," is voided and replaced by the following:

7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned equipment:

- Standby will be paid at 50% of the monthly Equipment Watch rate after the regional and age adjustment factors have been applied. Operating costs will not be allowed. Calculate the standby rate as follows.

$$\text{Standby rate} = (\text{FHWA hourly rate} - \text{operating costs}) \times 50\%$$

- If an hourly rate is needed, divide the monthly *Equipment Watch* rate by 176.
- No more than 8 hr. of standby will be paid during a 24-hr. day period, nor more than 40 hr. per week.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

Special Provision to Item 421

Hydraulic Cement Concrete



Item 421, "Hydraulic Cement Concrete" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 421.2., "Materials," the second sentence of the first paragraph is voided and replaced by the following.

Provide aggregates from sources listed in the Department's Concrete Rated Source Quality Catalog (CRSQC).

Article 421.2.2., Supplementary Cementing Materials (SCM), is voided and replaced with the following.

Supplementary Cementing Materials (SCM).

- **Fly Ash.** Furnish fly ash, Modified fly ash (MFA), and Ground Bottom Ash (GBA) conforming to [DMS-4610](#), "Fly Ash."
- **Slag Cement.** Furnish Slag Cement conforming to [DMS-4620](#), "Slag Cement."
- **Silica Fume.** Furnish silica fume conforming to [DMS-4630](#), "Silica Fume."
- **Metakaolin.** Furnish metakaolin conforming to [DMS-4635](#), "Metakaolin."

Article 421.3.1.3., "Agitators and Truck and Stationary Mixers," the first paragraph is voided and replaced by the following.

Provide stationary and truck mixers capable of combining the ingredients of the concrete into a thoroughly mixed and uniform mass and capable of discharging the concrete so that the requirements of [Tex-472-A](#) are met.

Article 421.3.1.3., "Agitators and Truck and Stationary Mixers," is supplemented with the following.

Truck mixers with automated water and chemical admixture measurement and slump and slump flow monitoring equipment meeting the requirement of ASTM C 94 will be allowed. Provide data every 6 mo. substantiating the accuracy of slump, slump flow, temperature, water, and chemical admixture measurements. The slump measured by the automated system must be within 1 in. of the slump measured in accordance with [Tex-415-A](#). The concrete temperature measured by the automated system must be within 1°F of concrete temperature measured in accordance with [Tex-422-A](#). The Engineer will not use the automated measurements for acceptance.

Article 421.4.2, "Mix Design Proportioning," Table 8 is voided and replaced by the following.

Table 8
Concrete Classes

Class of Concrete	Design Strength, ¹ Min f'_c (psi)	Max w/cm Ratio	Coarse Aggregate Grades ^{2,3,4}	Cement Types	Mix Design Options	Exceptions to Mix Design Options	General Usage ⁵
A	3,000	0.60	1-4, 8	I, II, I/II, IL, IP, IS, IT, V	1, 2, 4, & 7	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Curb, gutter, curb & gutter, conc. retards, sidewalks, driveways, back-up walls, anchors, non-reinforced drilled shafts
B	2,000	0.60	2-7				Riprap, traffic signal controller foundations, small roadside signs, and anchors
C ⁶	3,600	0.45	1-6	I, II, I/II, IP, IL, IS, IT, V	1-8		Drilled shafts, bridge substructure, traffic rail, culverts except top slab of direct traffic culverts, headwalls, wing walls, inlets, manholes, traffic barrier
E	3,000	0.50	2-5	I, II, I/II, IL, IP, IS, IT, V	1-8	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Seal concrete
F ⁶	Note ⁷	0.45	2-5	I, II, I/II, IP, IL, IS, IT, V			Railroad structures; occasionally for bridge piers, columns, bents, post-tension members
H ⁶	Note ⁷	0.45	3-6	I, II, I/II, III, IP, IL, IS, IT, V	1-4, 8	Mix design options 1-8 allowed for cast-in-place concrete and the following precast elements unless otherwise stated in the plans: <ul style="list-style-type: none"> ■ Bridge Deck Panels, ■ Retaining Wall Systems, ■ Coping, ■ Sound Walls, ■ Wall Columns, ■ Traffic Rail, ■ Traffic Barrier, ■ Long/Arch Span Culverts, and ■ precast concrete products included in Items 462, 464, and 465. Do not use Type III cement in mass placement concrete. Up to 20% of blended cement may be replaced with listed SCMs when Option 4 is used for precast concrete. Options 6, & 7 allowed for cast-in-place Class H concrete.	Precast concrete, post-tension members
S ⁶	4,000	0.45	2-5	I, II, I/II, IP, IL, IS, IT, V	1-8		Bridge slabs, top slabs of direct traffic culverts, approach slabs
P	See Item 360, "Concrete Pavement."	0.50	2-3	I, II, I/II, IL, IP, IS, IT, V	1-8	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Concrete pavement

Class of Concrete	Design Strength, ¹ Min f_c (psi)	Max w/cm Ratio	Coarse Aggregate Grades ^{2,3,4}	Cement Types	Mix Design Options	Exceptions to Mix Design Options	General Usage ⁵
CO ⁶	4,600	0.40	6		1-8		Bridge deck concrete overlay
LMC ⁶	4,000	0.40	6-8				Latex-modified concrete overlay
SS ⁶	3,600	0.45	4-6	I, II, I/II, IP, IL, IS, IT, V	1-8	Use a minimum cementitious material content of 658 lb./cu. yd. of concrete. Limit the alkali loading to 4.0 lbs./cu. yd. or less when using option 7.	Slurry displacement shafts, underwater drilled shafts
K ⁶	Note ⁷	0.40	Note ⁷	I, II, I/II, III IP, IL, IS, IT, V	1-8		Note ⁷
HES	Note ⁷	0.45	Note ⁷	I, IL, II, I/II, III		Mix design options do not apply. 700 lb. of cementitious material per cubic yard limit does not apply.	Concrete pavement, concrete pavement repair
"X" (HPC) _{6,8,9}	Note ¹⁰	0.45	Note ¹⁰	I, II, I/II, III IP, IL, IS, IT, V	1-4, & 8	Maximum fly ash replacement for Option 3 may be increased to 50%. Up to 20% of a blended cement may be replaced with listed SCMs for Option 4. Do not use Option 8 for precast concrete.	
"X" (SRC) _{6,8,9}	Note ¹⁰	0.45	Note ¹⁰	I/II, II, IP, IL, IS, IT, V	1-4, & 7	When using fly ash, only use fly ashes allowed for SRC as listed in the Fly Ash MPL. Type III-MS may be used where allowed. Type I and Type III cements may be use when fly ashes allowed for SRC as listed in the Fly Ash MPL are used, and with a maximum w/cm of 0.40. Up to 20% of blended cement may be replaced with listed SCMs when Option 4 is used for precast concrete. Use Option 7 for precast concrete where allowed.	

- Design strength must be attained within 56 days.
- Do not use Grade 1 coarse aggregate except in massive foundations with 4 in. minimum clear spacing between reinforcing steel bars, unless otherwise permitted. Do not use Grade 1 aggregate in drilled shafts.
- Use Grade 8 aggregate in extruded curbs unless otherwise approved.
- Other grades of coarse aggregate maybe used in non-structural concrete classes when allowed by the Engineer.
- For information only.
- Structural concrete classes.
- As shown on the plans or specified.
- "X" denotes class of concrete shown on the plans or specified.
- (HPC): High Performance Concrete, (SRC): Sulfate Resistant Concrete.
- Same as class of concrete shown on the plans.

Article 421.4.2.2., "Aggregates," is supplemented by the following.

Use the following equation to determine if the aggregate combination meets the sand equivalency requirement when blending fine aggregate or using an intermediate aggregate:

$$\frac{(SE_1 \times P_1) + (SE_2 \times P_2) + (SE_{ia} \times P_{ia})}{100} \geq 80\%$$

where:

SE_1 = sand equivalency (%) of fine aggregate 1

SE_2 = sand equivalency (%) of fine aggregate 2

SE_{ia} = sand equivalency (%) of intermediate aggregate passing the 3/8 in. sieve

P_1 = percent by weight of fine aggregate 1 of the fine aggregate blend

P_2 = percent by weight of fine aggregate 2 of the fine aggregate blend

P_{ia} = percent by weight of intermediate aggregate passing the 3/8 in. sieve

Article 421.4.2.3., “Chemical Admixtures,” the second paragraph is voided and replaced with the following.

Use a 30% calcium nitrite solution when a corrosion-inhibiting admixture is required. Dose the admixture at the rate of gallons of admixture per cubic yard of concrete shown on the plans. Use set retarding admixtures, as needed, to control setting time to ensure concrete containing corrosion inhibiting admixtures remain workable for the entire duration of the concrete placement. Perform setting time testing and slump loss testing during trial batch testing.

Article 421.4.2.5., “Slump,” the second paragraph is voided and not replaced. Table 9 is voided and replaced with below:

Table 9
Placement Slump Requirements

General Usage	Placement Slump Range, ^{1,2} in.
Walls (over 9 in. thick), caps, columns, piers	3 to 7
Bridge slabs, top slabs of direct traffic culverts, approach slabs, concrete overlays, latex-modified concrete for bridge deck overlays	3 to 6
Inlets, manholes, walls (less than 9 in. thick), bridge railing, culverts, concrete traffic barrier, concrete pavement (formed)	4 to 6
Precast concrete	4 to 9
Underwater concrete placements	6 to 8-1/2
Drilled shafts, slurry displaced and underwater drilled shafts	See Item 416, “Drilled Shaft Foundations.”
Curb, gutter, curb and gutter, concrete retards, sidewalk, driveways, seal concrete, anchors, riprap, small roadside sign foundations, concrete pavement repair, concrete repair	As approved

1. Maximum slump values may be increase above these values shown using chemical admixtures, provided the admixture treated concrete has the same or lower water-to-cementitious ratio and does not exhibit segregation or excessive bleeding. Request approval to increase slump limits in advance for proper evaluation by the Engineer.
2. For fiber reinforced concrete, perform slump before addition of fibers.

Article 421.4.2.6., “Mix Design Options”, is voided and replaced with the following.

Option 1. Replace cement with at least the minimum dosage listed in the Fly Ash MPL for the fly ash used in the mixture. Do not replace more than 50% of the cement with fly ash.

Option 2. Replace 35% to 50% of the cement with slag cement.

Option 3. Replace 35% to 50% of the cement with a combination of fly ash, slag cement, MFA, metakaolin, or at least 3% silica fume; however, no more than 35% may be fly ash, and no more than 10% may be silica fume.

Option 4. Use Type IP, Type IS, or Type IT cement as allowed in Table 8 for each class of concrete. Up to 10% of a Type IP, Type IS, or Type IT cement may be replaced with fly ash, slag cement, or silica fume. Use no more than 10% silica fume in the final cementitious material mixture if the Type IT cement contains silica fume, and silica fume is used to replace the cement.

Option 5. Option 5 is left intentionally blank.

Option 6. Use a lithium nitrate admixture at a minimum dosage determined by testing conducted in accordance with Tex-471-A. Before use of the mix, provide an annual certified test report signed and sealed by a licensed professional engineer, from a laboratory on the Department's MPL, certified by the Construction Division as being capable of testing according to Tex-471-A.

Option 7. Ensure the total alkali contribution from the cement in the concrete does not exceed 3.5 lb. per cubic yard of concrete when using hydraulic cement not containing SCMs calculated as follows:

$$\text{lb. alkali per cu. yd.} = \frac{(\text{lb. cement per cu. yd.}) \times (\% \text{ Na}_2\text{O equivalent in cement})}{100}$$

In the above calculation, use the maximum cement alkali content reported on the cement mill certificate.

Option 8. Use Table 10 when deviating from Options 1–3 or when required by the Fly Ash MPL. Perform required testing annually and submit results to the Engineer. Laboratories performing ASTM C1260, ASTM C1567, and ASTM C1293 testing must be listed on the Department's MPL. Before use of the mix, provide a certified test report signed and sealed by a licensed professional engineer demonstrating the proposed mixture conforms to the requirements of Table 10.

Provide a certified test report signed and sealed by a licensed professional engineer, when HPC is required, and less than 20% of the cement is replaced with SCMs, demonstrating ASTM C1202 test results indicate the permeability of the concrete is less than 1,500 coulombs tested immediately after either of the following curing schedules:

- Moisture cure specimens 56 days at 73°F.
- Moisture cure specimens 7 days at 73°F followed by 21 days at 100°F.

Table 10
Option 8 Testing and Mix Design Requirements

Scenario	ASTM C1260 Result		Testing Requirements for Mix Design Materials or Prescriptive Mix Design Options
	Mix Design Fine Aggregate	Mix Design Coarse Aggregate	
A	> 0.10%	> 0.10%	Determine the dosage of SCMs needed to limit the 14-day expansion of each aggregate ¹ to 0.10% when tested individually in accordance with ASTM C1567.
B	≤ 0.10%	≤ 0.10%	Use the minimum replacement listed in the Fly Ash MPL, or When Option 8 is listed on the MPL, use a minimum of 40% fly ash with a maximum CaO ² content of 25%, or Use any ternary combination which replaces 35% to 50% of cement.
	≤ 0.10%	ASTM C1293 1 yr. Expansion ≤ 0.04%	Use a minimum of 20% of any fly ash; or Use any ternary combination which replaces 20% to 50% of cement.
C	≤ 0.10%	> 0.10%	Determine the dosage of SCMs needed to limit the 14-day expansion of coarse and intermediate ¹ aggregate to 0.10% when tested individually in accordance with ASTM C1567.
D	> 0.10%	≤ 0.10%	Use the minimum replacement listed in the Fly Ash MPL, or When Option 8 is listed on the MPL, use a minimum of 40% fly ash with a maximum CaO ² content of 25%, or Use any ternary combination which replaces 35% to 50% of cement.
	> 0.10%	ASTM C1293 1 yr. Expansion ≤ 0.04%	Determine the dosage of SCMs needed to limit the 14-day expansion of each fine aggregate to 0.10% when individually tested in accordance with ASTM C1567.

1. Intermediate size aggregates will fall under the requirements of mix design coarse aggregate.
2. Average the CaO content from the previous ten values as listed on the test certificate.

Article 421.4.2.7., "Optimized Aggregate Gradation (OAG) Concrete," the first sentence of the first paragraph is voided and replaced by the following.

The gradations requirements in Table 4 and Table 6 do not apply when OAG concrete is specified or used by the Contractor unless otherwise shown on the plans.

The fineness modulus for fine aggregate listed in Table 5, does not apply when OAG Concrete is used,

Article 421.4.6.2., “Delivering Concrete,” the third paragraph is supplemented by the following.

When truck mixers are equipped with automated water or chemical admixture measurement and slump or slump flow monitoring equipment, the addition of water or chemical admixtures during transit is allowed. Reports generated by this equipment must be submitted to the Engineer daily.

Article 421.4.6.2., “Delivering Concrete,” the fifth paragraph is voided and replaced with the following. Begin the discharge of concrete delivered in truck mixers within the times listed in Table 14. Concrete delivered after these times, and concrete that has not begun to discharge within these times will be rejected

Article 421.4.8.3., “Testing of Fresh Concrete,” is voided and replaced with the following.

Testing Concrete. The Engineer, unless specified in other Items or shown on the plans, will test the fresh and hardened concrete in accordance with the following methods:

- Slump. [Tex-415-A](#);
- Air Content. [Tex-414-A](#) or [Tex-416-A](#);
- Temperature. [Tex-422-A](#);
- Making and Curing Strength Specimens. [Tex-447-A](#);
- Compressive Strength. [Tex-418-A](#);
- Flexural Strength. [Tex-448-A](#); and
- Maturity. [Tex-426-A](#).

Flexural strength and maturity specimens will not be made unless specified in other items or shown on the plans.

Concrete with slump less than minimum required after all addition of water withheld will be rejected, unless otherwise allowed by the Engineer. Concrete with slump exceeding maximum allowed may be used at the contractor’s option. If used, Engineer will make, test, and evaluate strength specimens as specified in Article 421.5., “Acceptance of Concrete.” Acceptance of concrete not meeting air content or temperature requirements will be determined by Engineer. Fresh concrete exhibiting segregation and excessive bleeding will be rejected.

Article 421.4.8.3.1. “Job-Control Testing,” is voided and not replaced.

Special Provision to Item 464

Reinforced Concrete Pipe



Item 464, "Reinforced Concrete Pipe," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Section 2.1., "Fabrication." The section is voided and replaced with the following.

Fabrication plants must be approved by the Materials and Tests Division in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures," before furnishing precast reinforced concrete pipe for Departmental projects. The Department's MPL has a list of approved reinforced concrete pipe plants.

Furnish material and fabricate reinforced concrete pipe in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

Section 2.3., "Marking." The first paragraph is voided and replaced with the following.

Furnish each section of reinforced concrete pipe marked with the following information specified in DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

- Class or D-Load of pipe,
- ASTM designation,
- Date of manufacture,
- Pipe size,
- Name or trademark of fabricator and plant location,
- Designation "TX" for precast units fabricated per DMS-7305;
- Designated fabricator's approval stamp for each approved unit,
- Pipe to be used for jacking and boring (when applicable), and
- Designation "SR" for pipe meeting sulfate-resistant concrete plan requirements (when applicable).

Section 2.5., "Causes for Rejection." The section is voided and replaced with the following.

Individual sections of pipe may be rejected for any of the conditions stated in the Annex of DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

Section 2.6., "Repairs." The section is voided and replaced with the following:

Make repairs, if necessary, as stated in the Annex of DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

Special Provision to Item 502

Barricades, Signs and Traffic Handling



Item 502, "Barricades, Signs and Traffic Handling" of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 502.1., "Description," is supplemented by the following:

Temporary work-zone (TWZ) traffic control devices manufactured after December 31, 2019, must have been successfully tested to the crashworthiness requirements of the 2016 edition of the Manual for Assessing Safety Hardware (MASH). Such devices manufactured on or before this date and successfully tested to NCHRP Report 350 or the 2009 edition of MASH may continue to be used throughout their normal service lives. An exception to the manufacture date applies when, based on the project's date of letting, a category of MASH-2016 compliant TWZ traffic control devices are not approved, or are not self-certified after the December 31, 2019, date. In such case, devices that meet NCHRP-350 or MASH-2009 may be used regardless of the manufacture date.

Such TWZ traffic control devices include: portable sign supports, barricades, portable traffic barriers designated exclusively for use in temporary work zones, crash cushions designated exclusively for use in temporary work zones, longitudinal channelizers, truck and trailer mounted attenuators. Category I Devices (i.e., lightweight devices) such as cones, tubular markers and drums without lights or signs attached however, may be self-certified by the vendor or provider, with documentation provided to Department or as are shown on Department's Compliant Work Zone Traffic Control Device List.

Article 502.4., "Payment," is supplemented by the following:

Truck mounted attenuators and trailer attenuators will be paid for under Special Specification, "Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)." Portable Changeable Message Signs will be paid for under Special Specification, "Portable Changeable Message Sign." Portable Traffic Signals will be paid for under Special Specification, "Portable Traffic Signals."

Special Provision to Item 506

Temporary Erosion, Sedimentation, and Environmental Controls



Item 506, "Temporary Erosion, Sedimentation, and Environmental Controls," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 506.1., "Description." The second paragraph is voided and replaced by the following.

Contractor is considered primary operator to have day-to-day operational control as defined in TPDES GP TXR150000.

- 1.1. For projects with soil disturbance of less than 1 acre, no submittal to TCEQ will be required but Contractor will follow SWP3. For projects with soil disturbance of 1 acre to less than 5 acres a small site notice will be posted at the site. For projects with soil disturbance of 5 acres or more a Notice of Intent (NOI) is required and a large site notice posted at site. Postings will be in accordance with TPDES GP TXR150000. Postings not associated with project specific locations will be in same location as Department's postings.
- 1.2. **Notice of Intent (NOI).** Submit a NOI, if applicable, with the TCEQ under the TPDES GP TXR150000 at least 7 days prior to commencement of construction activities at the project site. Provide a signed copy to the Engineer and any other MS4 operators at the time of submittal. The Department will submit their NOI prior to contractor submission and will provide a copy for Contractor's use in completing the Contractor's NOI form.
- 1.3. **Notice of Change (NOC).** Upon concurrence of the Engineer, submit a NOC, if applicable, to the TCEQ within 14 days of discovery of a change or revision to the NOI as required by the TPDES GP TXR150000. Provide a signed copy of the NOC to the Engineer and any other MS4 operators at the time of submittal.
- 1.4. **Notice of Termination (NOT).** Upon concurrence of the Engineer, submit a NOT, if applicable, to the TCEQ within 30 days of the Engineer's approval that 70% native background vegetative cover is met or equivalent permanent stabilization have been employed in accordance with the TPDES GP TXR 150000. Provide a signed copy of the NOT to the Engineer and any other MS4 operators at the time of submittal.

Section 506.3.1, "Contractor Responsible Person Environmental (CRPE) Qualifications and Responsibilities," is supplemented by the following:

- 3.1. **Contractor Responsible Person Environmental (CRPE) Qualifications and Responsibilities.** Provide and designate in writing at the preconstruction conference a CRPE and alternate CRPE who have overall responsibility for the storm water management program. The CRPE will implement stormwater and erosion control practices; will oversee and observe stormwater control measure monitoring and management; will monitor the project site daily and produce daily monitoring reports as long as there are BMPs in place or soil disturbing activities are evident to ensure compliance with the SWP3 and TPDES General Permit TXR150000. Daily monitor reports shall be maintained and made available upon request. During time suspensions when work is not occurring or on contract non-work days, daily inspections are not required unless a rain event has occurred. The CRPE will provide recommendations on how to improve the effectiveness of control measures. Attend the Department's preconstruction conference for the project. Ensure training is completed as identified in Section 506.3.3., "Training," by all applicable personnel before employees work on the project. Document and maintain and make available upon request, a list, signed by the CRPE, of all applicable Contractor and subcontractor employees who have completed the training. Include the employee's name, the training course name, and date the employee completed the training.

Section 506.3.3., "Training," is supplemented by the following:

Training is provided by the Department at no cost to the Contractor and is valid for 3 yr. from the date of completion. The Engineer may require the following training at a frequency less than 3 yr. based on environmental needs:

- “Environmental Management System: Awareness Training for the Contractor” (English and Spanish) (Approximate running time 20 min.), and
- “Storm Water: Environmental Requirements During Construction” (English and Spanish) (Approximate running time 20 min.).

The Contractor responsible person environmental (CRPE), alternate CRPE designated for emergencies, Contractor's superintendent, Contractor, and subcontractor lead personnel involved in soil disturbing or SWP3 activities must enroll in and complete the training listed below and maintain and make available upon request the certificate of completion. Training is provided by a third party and is valid for 3 yr. from the date shown on the Certificate of Completion. Coordinate enrollment as prescribed by the Department and pay associated fees for the following training:

- “Revegetation During Construction,”
- “Construction General Permit Compliance,” and
- “Construction Stage Gate Checklist (CSGC).”

Training and associated fee will not be measured or paid for directly but are subsidiary to this Item.