

Chapter 44 Plans, Specifications, and Estimates

44.1 General Discussion

After a project's location and design have been approved, work begins on the final version of the plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in [Chapter 13](#), becoming Certified to Administer FHWA Projects, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Washington State Department of Transportation (WSDOT)/Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications and document that approval, and a professional engineer licensed in the state of Washington must seal and date the plans and specifications.

The local agency should use the Project Development Checklist¹ to check for completeness of the contract plans prior to approving them.

The local agency must maintain a commitment file, when applicable. This must contain a summary of all commitments made during the development of the project. The file should be reviewed to ensure that the commitments that apply to the contractor are incorporated in the PS&E. This file must also include commitments the local agency is responsible for completing, such as annual reporting to resource agencies. It is the local agency's responsibility to ensure this file is updated to show when these commitments were completed. Commitments typically involve right of way, maintenance and/or environmental considerations.

A copy of the preliminary PS&E must be submitted to the Region Local Programs Office for concurrence prior to Advertisement. An Ad-ready copy shall also be furnished to the Region Local Programs Engineer prior to advertisement. If the local agency would like WSDOT to prepare the Record of Materials (ROM), an additional copy is also needed.

In addition, any local agency project with work on, over or below state routes or within limited access for the interstate system requires design and traffic documentation approval and PS&E concurrence from WSDOT prior to advertisement. A WSDOT general permit may also be required prior to Ad. The Region Local Programs Engineer can assist in coordinating these approvals.

On WSDOT ad-and-award projects, WSDOT will review and concur with the PS&E prior to printing contract plans and specifications. An estimate of the cost of this service can be obtained from the Region Local Programs Engineer. Refer to forms for a checklist.

44.2 PS&E Requirements

- .21 **Wage Rates** – For information on state law requirements, contact the Municipal Research and Services Center for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Washington State Department of Labor and Industries (L&I) and the U.S. Department of Labor^{2 3 4}.

¹ Form 140-552
² 29 CFR Part 30
³ RCW 39.12
⁴ RCW 49.28

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding \$2,000. The Davis-Bacon requirements do not apply to force account work performed by agency forces.

The applicability of Davis-Bacon is dependent on the relationship or linkage of the project to a federal aid highway. If the project is “linked” to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc. Please contact your Region Local Programs Engineer to determine if Davis Bacon prevailing wage rates apply.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation projects. The US Department of Labor states in its Field Operations Handbook (Section 15): “There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived.” The Davis-Bacon Related Act for the Federal Aid Highway Program (23 U.S.C. Section 113) is silent on this subject. Therefore, on projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer labor under its direct control as a force account effort.

Local agencies may request the current wage rates through their Region Local Programs Engineer.

The effective date for state and federal rates is determined as follows:

- a. **State Wage Rates** – L&I will use the date that bids are due as the effective date for determining prevailing wages provided that the contract is awarded within 60 days after bids are due. If the contract is not awarded within 60 days after bids are due, L&I will determine the prevailing wage on the date the contract is awarded.
- b. **Federal Wage Rates** – This data is received from the USDOL in a document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts.” Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by WSDOT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award.

The following are exceptions:

- The effective date for determining state prevailing wage rates shall be the date of bid opening. For contracts awarded more than four months after the bid opening date, the effective date for determining the wage rates shall be the award date.
- The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening). For contracts awarded more than 60 days after the bid opening date, the effective date for determining the wage rates shall be the award date.

Prior to bid opening, the local agency may contact the Region Local Programs Engineer to see if wage rates have changed or are pending.

To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested from the Region Local Programs Engineer seven days before the advertising date.

.22 Other Requirements

- a. **Form FHWA-1273** – Each set of contract documents shall include Form FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts. Copies of the current version of the FHWA-1273 are available from the WSDOT Forms website.
- b. **Affirmative Action** – Equal Employment Opportunity and Training.
- c. **Disadvantaged Business Enterprises (DBE)** – In accordance with FHWA and WSDOT efforts to increase DBE participation in FHWA projects, WSDOT has developed a management-by-objective goal-setting process for DBE participation. For additional information, Disadvantaged Business Enterprises.
- d. **“Buy-America” Requirements** – Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.

The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.

Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed unless it meets the limitations allowed by the “Buy America” General Special Provision.

- e. **Traffic Control Plans** – Traffic Control Plans (TCP) must be included in the contract documents. TCPs shall be consistent with Part 6 of the MUTCD, low volume roads, Part 5 Site specific TCPs, Detour Plans, and agreements shall be included in the contract documents to demonstrate constructability. **K Plans used as a reference are NO LONGER ALLOWED. Agencies must develop contract specific traffic control plans for each contract.**

Agencies intending to utilize LUMP SUM temporary project traffic control MUST receive concurrence from Assistant State Local Programs Engineer prior to advertisement.

Lump Sum Traffic Control justification shall include a justification memo, project site specific TCPs, vicinity map, and an estimated of the cost breakdown of items included in the lump sum for the proposed TCPs, detailed construction schedule.

Items included in lump sum project temporary traffic control are limited to items of work normally performed as part of temporary project traffic control item of work and as defined in Part 6 of the MUTCD. The following list of items that includes, but are not limited to items that may not be included in the lump sum temporary traffic control bid item,

- Portable Changeable Message Signs (PMCS)
- Transportable Impact Attenuators (TMA)
- Repair of TMA
- Portable Temporary Traffic Control Signal
- Temporary or permanent pavement markings
- Street cleaning or sweeping
- Uniformed Police Officer (UPO)
- Temporary Pavement
- Utility Relocations
- Temporary ADA ramps

Construction projects that impact bicycle and/or pedestrian traffic must include accommodation for all impacted modes of travel in the contract Traffic Control Plans. Ensure these accommodations are in compliance with ADA standards.

- f. **A “TIED BID”** is a federal project and a non-federal project or two federal projects (otherwise separate contacts) that are advertised and bid together as a single contract. To bid the projects under a single contract, approval is required by Local Programs prior to being advertised.
- g. **Agency-Supplied Materials Justification** – Justification for the use of agency-supplied materials must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding meeting all federal requirements. Material purchased from an agency directed source may be used only when preapproved by Assistant State Local Programs Engineer. To receive approval, submit a Public Interest Finding (PIF) for approval prior to advertisement.
- h. **Warranty/Guarantee** – No warranty requirement shall be approved which may place an undue obligation on the contractor for items or conditions over which the contractor has no control. Warranties/guarantees shall not be included in federal aid projects or the bonds except as follows:

On NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Warranties for items of maintenance are not eligible for federal participation and will not be allowed. All warranty requirements and subsequent revisions shall be submitted to the WSDOT Region Local Programs Engineer and forwarded to Local Programs for advance approval. Warranties cannot increase the cost of the federal contract or be reimbursed with federal funds and must have a separate bid item for payment included in the contract.

On non-NHS construction contracts a warranty can be included in the contract in accordance with the following: Project warranty/maintenance provisions may be included in a project if a nonparticipating bid item and special provision is included in the contract. Warranty/maintenance provisions and requirements cannot extend beyond one year from physical completion of the contract. All other warranty requirements other than product or feature, and subsequent revisions, shall be submitted to Region Local Programs Engineer for advance approval. Warranties cannot increase the cost of the federal contract or be reimbursed with federal funds and must have a separate bid item for payment included in the contract.

- .23 **Local Ad and Award Projects** – See [Chapter 46](#).
- .24 **State Ad and Award Projects** – See [Chapter 45](#).

44.3 Documents Requiring Professional Stamps

The following documents require a PE stamp upon completion. The Professional Engineer with responsible charge of the project will assure that appropriate engineering reports and documents are stamped in accordance with [RCW 18.43.070](#). If a particular “Engineering Report or Document” is not listed, it is not necessarily exempt from the requirement.

The list includes:

- Design Documents
- Right of Way Plans

- Type, Size, and Location Report
- Plans, Specifications (with appropriate Division 1 approvals as outlined in [Section 44.5](#)), and Estimates, including all plan sheets.
- Special Provisions
- Temporary Erosion and Sediment Control Plan
- Plans for Falsework and Forms, normally the contractor's responsibility
- Bridge Design Report
- Bridge Load Ratings
- As Built Plans
- Technical Change Orders
- Value Engineering Study Report
- Standards Deviation Request
- Emergency Contracts that contain the equivalent of PS&E documents

44.4 Contract Plans

For WSDOT ad-and-award projects, the plans should be prepared in accordance with the *Plans Preparation Manual* M 22-31. For local ad-and-award projects, there are no federal or state requirements for plan sheet size or guidelines for preparing contract plans.

44.5 Specifications

WSDOT publishes the Standard Specifications (published yearly electronic format only), and Mandatory GSPs (published as necessary) and General Special Provisions.

Federal funded projects require review and approval of Division 1 of the Standard Specifications from Assistant State Local Programs Engineer. The review and approval shall include Division 1 revisions (WSDOT or APWA General Special Provision) require prior approval from Assistant State Local Programs Engineer. The submittal of the Division 1 review package shall be in "word" or equal formatting with tracked changes. The agency shall identify any additions or changes including fill in modifications utilizing the tracked changes method. (All GSPs with references to the requirement for "The approval of the Region Construction Engineer" or "At the discretion of the Region" shall mean the approval of Assistant State Local Programs Engineer.)

Local Agencies shall not develop or incorporate additional divisions in the special provisions outside of the current divisions defined in the Standard Specifications divisions of one through nine, in the "Instructions to Bidders" documents, or within the contract agreement. Clearly identify the origin of a GSP helps with tracking, General Special Provision, APWA Special Provision, Agency Provision, or Project Provisions.

- .51 **Standard Specifications** – All FHWA funded projects and all State projects funded through WSDOT Local Programs, including local agency force projects, will be constructed in conformance with the current *Standard Specifications for Road, Bridge, and Municipal Construction* M 41-10, and approved mandatory GSPs that modify these specifications.
- .52 **Mandatory GSPs are modifications to the *Standard Specifications*** – These mandatory GSPs are approved and required changes to the *Standard Specifications* that occur between the yearly publication.

- .53 General Special Provisions** – These are specifications that describe special project features in common usage.⁵
- .54 APWA General Special Provisions** – These are specifications unique to local agency projects.⁶
- .55 Special Provisions** – Special Provisions are specifications governing matters peculiar to an individual project, they are not covered in the *Standard Specifications*. Their use should be held to a minimum and applicable *Standard Specifications* should be used instead. Issues mandated in the state and federal laws shall not be changed.

Special Provisions are required:

- a. For the presentation of all features of a project not covered by the *Standard Specifications* and General Special Provisions.
- b. Where the *Standard Specifications* are being modified, supplemented, or amended.
- c. For any deviation from the *Standard Specifications* with regard to materials, construction details, measurement, and payment.
- d. When noted in the WSDOT Standard Item Table.

The following paragraphs discuss some pertinent aspects of special provisions.

- All nonstandard pay items shall be covered in the Special Provisions.
- The local agency is encouraged to include a value engineering incentive clause in their construction specifications encouraging the contractor to propose changes in contract requirements that will accomplish the project's functional requirements at less cost on high cost and major projects.
- Traffic control must be in accordance with the MUTCD. A Special Provision shall be prepared outlining traffic control requirements and including any pay items.
- Neatline measurement of quantities is allowed by special provision. This specification may allow payment of the neatline measurement from the lines and grades as shown on the plans or as directed by the Engineer's stakes on the ground. This may apply to aggregates, base course, and surfacing. On asphalt quantities, the unit price could include the cost of coring to verify density and depths. Culvert and pipeline installation may be paid by the lineal foot-in place with bedding, backfill, and compaction as incidental to the unit price. In these instances, an item should be added for extra excavation or backfill if the profile varies or is subject to change during the contract. Shoring must be paid as a separate bid item.
- Direct reference to proprietary specifications of national, regional, or local trade associations should not be included in FHWA contract specifications; such proprietary specifications are subject to change without notice to, or acceptance by, the state or FHWA. If proprietary specifications must be used, the complete text, or such parts as are applicable, should be incorporated into special provisions for the project.

⁵ wsdot.wa.gov/engineering-standards/all-manuals-and-standards/general-special-provisions-gsps

⁶ wsdot.wa.gov/engineering-standards/all-manuals-and-standards/general-special-provisions-gsps/local-agency-general-special-provisions-gsps

Patented/Proprietary Items

The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. Specifying patented or proprietary material, products or processes is allowed for federal aid projects only under one of the following conditions:

Specify at Least Three Brand Names

- At least three names of acceptable materials or products, if available, are listed together with a list of the required features and specifications that will be considered equal to the listed items.

Patented/Proprietary Item Certification

- The agency has determined that a specific material or product is required to meet the agency's guidelines. A written Patented/Proprietary Item Certification document must be prepared and executed with the appropriate signatures. The final certification must be filed in the project file and a copy sent to Region Local Programs.

Specify Brand Names and Allow for Approved Equals

- Specify a brand name. The agency will provide the bidder with options by naming at least two additional products or manufacturers that are acceptable and allowing for "approved equals" followed by a performance specification. When this is done, no approval is required for usage; it is not considered a proprietary item.

A good specification for brand name specifying will read as follows:

The (type of product) furnished shall be (brand name, model), (brand name, model), or an approved equal having the following features (functions):

- a. (feature)
- b. (functions)
- c. (feature)

In order to find the two acceptable items, the agency has to be looking for certain features or functions. These features or functions need to be clearly identified in the Special Provision.

Public Interest Findings

The written (PIF) must:

- Clearly show that the best interest of the public and the agency will be achieved. This is accomplished by describing any cost effectiveness and efficiency to be realized. A benefit cost analysis should be completed to support the PIF. The supporting documentation and the decision of the agency must be maintained in the project file. See Form 140-050 PIF and Form 140-051 Certification, for detailed instructions see Appendices 44.77 through 44.82.
- Proprietary items must be documented on Form 140-051 and certified by the Local Agency. These certification forms shall be maintained in the agency's project files.

Agency certification PIF is not required when:

A utility agreement is being established and the utility company supplies the material at no cost. This includes minor quantities of materials and supplies and proprietary products that are routinely used in a utility's operation, which are essential for the maintenance of the system. **The material must still comply with the Buy America and Build America/Buy America (BABA) requirements.**

If the agency is requesting reimbursement for utility owned and installed illumination as part of the federal aid project, a PIF is required and must be approved by the Assistant State Local Programs Engineer prior to advertisement of the project.

44.6 Estimates

The engineer's estimate of a proposed project's cost shall include the estimated quantity and estimated unit price for each proposed work item. Bridge items shall be segregated from roadway items. A tabulation for each bridge showing its applicable items shall be submitted.

If materials salvaged from the project are to be used for roadway purposes, the value of such materials should not be included in the project cost.

The estimate shall separately list the costs of nonparticipating items, local agency force work, and local agency furnished materials.

The separate cost groups shall be summarized and totaled on the first sheet of the estimate.

The Region Local Programs Engineer may be contacted for assistance in preparing the estimate.⁷

44.7 Appendices

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⁷ [Appendix 44.74](#)

44.8 Forms - www.wsdot.wa.gov/forms/pdfForms.html

FHWA-1273	Required Contract Provisions Federal-Aid Construction Contracts
140-050	Public Interest Finding
140-051	Patented/Proprietary Item Certification
271-015A	Local Agency Subcontractor List
272-001A	Local Agency Proposal Bond
272-002A	Local Agency Performance Bond
272-003A	Local Agency Public Works Payment Bond
272-006A	Local Agency Contract - Highway Construction
272-008A	Local Agency Contract - Building Construction
272-036I	Local Agency Non-Collusion and Debarment Affidavit
272-036J	Local Agency Region Ad and Award Contract Proposal - Signature Page
272-036K	Local Agency Proposal - Signature Page
272-040A	Local Agency Certification for Federal Aid Contacts
272-056	Disadvantaged Business Enterprise Utilization Certification
272-063A	Local Agency Contractor Prequalification Questionnaire
272-070	Local Agency Plan Preparation Checklist
422-031	Disadvantaged Business Enterprise (DBE) Written Confirmation Document

Appendix 44.71 Vacant

Appendix 44.72 Vacant

Appendix 44.73 Vacant

Appendix 44.74 Estimate and Grouping – Example

English

Preliminary Estimate Dated: January 13, 1994

Title: North Ridge Road

Highway: Laramie County Road

Type of Work: Grading, surfacing, paving with asphalt concrete, construct cement concrete driveways, erosion control, and pavement marking.

Project: STPUL-6969(007)

County: Laramie

Total Length: Length of Project

Estimate Cost Data:

Contract Total	391,507.50
Engineering 15%	58,726.13
Total Cost of Project:	<u>450,233.63</u>

Note: Include below the line items such as: value of materials furnished by agency, agency force work, signs and traffic control, royalties, etc.

Item No.	Description	Unit	Price	Unit Quantity	Amount
1	Mobilization	Lump Sum		Lump Sum	\$ 20,000.00
2	Clearing and Grubbing	Lump Sum		Lump Sum	1,400.00
3	Roadway Excavation Including Haul	Cu. Yd.	\$ 2.00	780.0	1,560.00
4	Embankment Compaction	Cu. Yd.	1.00	413.0	413.00
5	Adjust Manhole	Each	300.00	12.0	3,600.00
6	Adjust Catch Basin	Each	100.00	24.0	2,400.00
7	Gravel Base Class B	Ton	3.00	28,870.0	86,610.00
8	Crushed Surfacing Top Course	Ton	5.00	6,500.0	32,500.00
9	Asphalt for Tack Coat	Ton	200.00	10.0	2,000.00
10	Cement Contract Driveway 14 Day	Sq. Yd.	16.00	289.0	4,624.00
11	Asphalt Concrete Pavement Class B Excluding Paving Asphalt	Ton	15.00	10,283.0	154,245.00
12	Topsoil Type B	Cu. Yd.	6.00	410.0	2,460.00
13	Cement Concrete Curb & Gutter	Lin. Ft.	3.50	13,073.0	45,755.50
14	Lane Marker Type 1	Hundred	200.00	19.5	3,900.00
15	Lane Marker Type 2	Hundred	400.00	2.1	840.00
16	One-Way Piloted Traffic Control	Estimate			6,000.00
17	Labor for Traffic Control	Hour	12.00	600.0	7,200.00
18	Reconstruct Wooden Fence	Lin. Ft.	8.00	2,000.0	<u>16,000.00</u>
	Contract Total				<u><u>\$ 391,507.50</u></u>

Laramie County Road
North Ridge Road

**Total Preliminary Estimate
Groups 1 and 2**

1/13/94

Project STPUL-6969(007)

Group No. 1
Federal Participation

Description: Two 12 ft. lanes from Sta. 8+658.50 to Sta. 8+954.92
F.A. Funds 83.01% Urban. Sales Tax 0.00%

Title: Laramie County Road Length: 5.614 miles

Item No.	Description	Unit	Price	Unit Quantity	Amount
1	Mobilization	Lump Sum			\$15,000.00
2	Clearing and Grubbing	Lump Sum			1,000.00
3	Roadway Excavation Including Haul	Cu. Yd.	\$ 2.00	590.0	1,180.00
4	Embankment Compaction	Cu. Yd.	1.00	313.0	313.00
5	Adjust Manhole	Each	300.00	9.0	2,700.00
6	Adjust Catch Basin	Each	100.00	18.0	1,800.00
7	Gravel Base Class B	Ton	3.00	21,660.0	64,980.00
8	Crushed Surfacing Top Course	Ton	5.00	4,900.0	24,500.00
9	Asphalt for Tack Coat	Ton	200.00	7.0	1,400.00
10	Cement Contract Driveway 14 Day	Sq. Yd.	16.00	209.0	3,344.00
11	Asphalt Concrete Pavement Class B Excluding Paving Asphalt	Ton	15.00	7,773.0	116,595.00
12	Topsoil Type B	Cu Yd.	6.00	410.0	2,460.00
13	Cement Concrete Curb & Gutter	Lin. Ft.	3.50	10,409.0	36,431.50
14	Lane Marker Type 1	Hundred	200.00	14.8	2,960.00
15	Lane Marker Type 2	Hundred	400.00	1.6	640.00
16	One-Way Piloted Traffic Control	Estimate			5,000.00
17	Labor for Traffic Control	Hour	12.00	500.0	6,000.00
18	Reconstruct Wooden Fence	Lin. Ft.	8.00	2,000.0	16,000.00
	Group Subtotal				\$ 302,303.50
	Engineering 15 Percent				45,345.53
	Group 1 F.A. Total				<u>\$ 347,649.03</u>

Laramie County Road
North Ridge Road

Group 1 Estimate

1/13/94

Project STPUL-6969(007)

Group No. 2
Local Funds Only

Description: Two 12 ft. lanes from Sta. 8+954.92 to Sta. 9+054.70
No. F.A. Funds and No Sales Tax

Title: Laramie County Road Length: 1.900 miles

Item No.	Description	Unit	Price	Unit Quantity	Amount
1	Mobilization	Lump Sum			\$ 5,000.00
2	Clearing and Grubbing	Lump Sum			400.00
3	Roadway Excavation Including Haul	Cu. Yd.	\$ 2.00	190.0	380.00
4	Embankment Compaction	Cu. Yd.	1.00	100.0	100.00
5	Adjust Manhole	Each	300.00	3.0	900.00
6	Adjust Catch Basin	Each	100.00	6.0	600.00
7	Gravel Base Class B	Ton	3.00	7,210.0	21,630.00
8	Crushed Surfacing Top Course	Ton	5.00	1,600.0	8,000.00
9	Asphalt for Tack Coat	Ton	200.00	3.0	600.00
10	Cement Contract Driveway 14 Day	Sq. Yd.	16.00	80.0	1,280.00
11	Asphalt Concrete Pavement Class B Excluding Paving Asphalt	Ton	15.00	2,510.0	37,650.00
13	Cement Concrete Curb & Gutter	Lin. Ft.	3.50	2,664.0	9,324.00
14	Lane Marker Type 1	Hundred	200.00	4.7	940.00
15	Lane Marker Type 2	Hundred	400.00	0.5	200.00
16	One-Way Piloted Traffic Control	Estimate			1,000.00
17	Labor for Traffic Control	Hour	12.00	100.0	1,200.00
	Group Subtotal				\$ 89,204.00
	Engineering 15 Percent				13,380.60
	Group 2 Local Funds Only Total				<u>\$ 102,584.60</u>

Laramie County Road
North Ridge Road

Group 2 Estimate

Appendix 44.75 Vacant

Appendix 44.76 Patented/Proprietary Items Certification Instructions

Project Information

Local Project Number – For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Chapter 24](#) of the LAG.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Chapter 24](#) of the LAG.
- Environmental Assessment (EA). Refer to [Chapter 24](#) of the LAG.

Agency – Fill in with the name Local Agency.

Estimated Amount – Fill in the total estimate amount of the total contract bid items.

Amount of Foreign Steel – Fill in the total calculated amount of all foreign steel included in the certification.

Project of Division Interest – Is when FHWA retains the full project oversight. If not certain, contact your Region Local Programs Engineer.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding from Local Programs.
- The agency must ensure the requested Patented/Proprietary Items meet the current “Buy America” requirements and must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Bid Item Description and Bid Item Number

- Bid item description should match the bid item description used in the project bid tabs.
- Bid item number should match the bid item number used in the project bid tabs.
- The total value of foreign steel or iron should be calculated on total amount for the bid item. (If there are ten units the amount entered should be the total for all ten units.)
- Both signatures from the local agency are required.

Appendix 44.77 Two-Week Advertisement – PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – Fill in the total amount of the request.

Project of Division Interest – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – Why is there a need for a two-week advertisement.

Description of Work – Provide a summary description of project.

Justification or Supporting Information

Cost Effectiveness Determination

- Attach a summary level estimate.
- Provide project schedules (documenting both three-week and two-week advertisement) showing the benefits of reducing the advertisement period.

Schedule Issues – Explain how the agency will deliver the project and describe the benefits to the public for reducing the advertisement period.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding from Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Environmental – N/A

NEPA/SEPA Logical Termini & Independent Utility – N/A

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefit. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

Appendix 44.78 Mandatory Use of Borrow or Disposal Site – PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – Fill in the total amount of the request.

Project of Division Interest – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – What is being accomplished/what is the outcome for using Mandatory Borrow or Disposal Site.

Description of Work – Provide a detailed description of work to be done.

Justification or Supporting Information

Cost Effectiveness Determination – Provide an explanation of cost effectiveness or benefits.

Schedule Issues – Explain how the agency will deliver the project and describe if there is a benefit to the public.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding form Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Environmental – N/A

NEPA/SEPA Logical Termini & Independent Utility – N/A

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

Appendix 44.79 Agency Supplied Equipment – PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – N/A

Project of Division Interest – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – What is being accomplished/what is the outcome for using agency supplied equipment.

Description of Work – Provide a detailed description of equipment being used.

Justification or Supporting Information

Cost Effectiveness Determination – Provide an explanation of cost effectiveness or benefits.

Schedule Issues – Explain how the agency will deliver the project and describe if there is a benefit to the public. Agency shall submit a copy of the award schedule showing that the agency has made sufficient effort to minimize the timeline throughout the advertisement and award process. The agency shall also submit a construction schedule demonstrating the limitations and need for the requested PIF materials.

PIF Supporting Documentation – Agency shall submit a copy of the advertisement and procurement process used to procure the items being supplied by the agency. Items supplied by the Agency must meet the open competitive bidding requirement as required by 23 USC 112. The Advertisement must include Title VI language and Buy America requirements 23 CFR 635.410.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Local Agency must identify the Agency Supplied Material meets the requirements of 23 CFR 635.410 (Buy America). In the event the Agency Supplied Material contains small amount of foreign steel or iron products, the agency shall document the amount of foreign materials and prepare a project specific special provision to inform the bidders the cost of such foreign materials.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Environmental – N/A

NEPA/SEPA Logical Termini & Independent Utility – N/A

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

Appendix 44.80 Agency Supplied Material – PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – Fill in the total amount of the request.

Project of Division Interest – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – What is being accomplished/what is the outcome for using agency supplied materials.

Description of Work – Provide a detailed description of why agency supplied materials are needed.

Justification or Supporting Information

Cost Effectiveness Determination

- Attach a detailed estimate for the material supplied (see [Appendix 44.81](#)).
- Provide an explanation of cost effectiveness or benefits.

Schedule Issues – Explain how the agency will deliver the project and describe if there is a benefits to the public. Agency shall submit a copy of the award schedule showing that the agency has made sufficient effort to minimis the timeline throughout the advertisement and award process. The agency shall also submit a construction schedule demonstrating the limitations and need for the requested PIF materials.

PIF Supporting Documentation – Agency shall submit a copy of the advertisement and procurement process used to procure the items being supplied by the agency. Items supplied by the Agency must meet the open competitive bidding requirement as required by 23 USC 112. The Advertisement must include Title VI language and Buy America requirements 23 CFR 635.410.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding form Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Environmental – N/A

NEPA/SEPA Logical Termini & Independent Utility – N/A

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT

Local Programs is required.

- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.
- Local Agency staff responsible for purchasing must comply with Washington State procurement procedures in accordance with [RCW 39.26](#) - Procurement of Good and Services.

Appendix 44.81 Local Agency Force Work– PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – Fill in the total amount of the request.

Full Oversight – Is this an FHWA full oversight project? If not certain, contact your Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – What is being accomplished/what is the outcome for the work being completed by local forces.

Description of Work – Provide a detailed description of work to be done by agency forces.

Justification or Supporting Information

Cost Effectiveness Determination

- Attach a detailed estimates of expected Contract Construction and Agency Force costs. Cost for Contract Construction should be based on unit price history. Agency Force cost estimates need to detail labor, equipment, materials, and agency overhead costs (see example).
- The local agency must comply with the appropriate design, construction, and material quality standards.
- The local agency must be able to obtain and document the same level of quality that is required for competitively bid contracts.
- Provide an explanation of cost effectiveness or benefits.

Schedule Issues – Explain how the agency will deliver the project and describe if there is a benefit to the public.

Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of Buy America compliant materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding Form Local Programs, to the limit allowed by the “Buy America” General Special Provision.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

Environmental – N/A

NEPA/SEPA Logical Termini & Independent Utility – N/A

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefit. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

ATTACHMENT "A"

Cost Effectiveness Determination • Continuation of Justification and Supporting Information

Agency Forces (PIF)

Agency:

Project Name:

Fed Aid Number:

Agency Force Cost

Material Cost			
	Unit Cost	Quantity	Amount
Signs and Posts	100	\$ 620.00	\$ 62,000.00

Labor - Operators wage rate:

Hourly Rate: \$ 30.00

Fringe Benefit (@ 54%): \$ 16.20

Total Labor Rate: \$46.19 per hour

	Labor Cost		Equipment Cost		Total Amount
	Unit cost	Hours	Unit Cost	Hours	
Mobilization (pickup)	\$ 46.19	150	\$ 37.50	150	\$ 12,553.50
ESC Lead	\$ 46.19	15	\$ 37.50	10	\$ 1,067.85
Traffic Control	\$ 46.19	300	\$ 37.50	300	\$ 25,107.00
Remove and disposal of existing signs	\$ 46.19	150	\$ 37.50	75	\$ 9,741.00
SPCC	\$ 46.19	10			\$ 461.90
Total Labor and Equipment costs					\$ 51,743.75

Materials: \$ 62,000.00

Labor: \$ 28,868.75

Equipment cost: \$ 20,062.5

Agency Admin/Overhead cost: \$19% of Labor: \$ 5,485.05

Total Agency Force Cost: \$ 116,416.30

ATTACHMENT "B"
Cost Effectiveness Determination • Continuation of Justification and Supporting Information

Agency Forces (PIF)

Agency:

Project Name:

Fed Aid Number:

Contract Construction Cost

Item	Measure	Unit	Unit Price	Amount
Mobilization	L.S.	1	\$ 20,000.00	\$ 20,000.00
ESC Lead	Day	15	\$ 110.00	\$ 1,650.00
Project Temporary Traffic Control	L.S.	1	\$ 40,000.00	\$ 40,000.00
Permanent Signing	Each	620	\$ 200.00	\$ 124,000.00
Removal & Disposal Existing Signs	L.S.	1	\$ 10,000.00	\$ 10,000.00
SPCC	L.S.	1	\$ 500.00	\$ 500.00
Total Contract Construction Cost:				\$ 196,150.00

Appendix 44.82 Tied Bids – PIF Instructions

Project Information

State/Local Project Number – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

Project Name – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

Federal Aid Project Number – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

NEPA Category – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

Region or Agency – Fill in with the WSDOT Region or Local Agency requesting the finding.

Amount – Fill in the total amount of the request.

Full Oversight – Is this an FHWA full oversight project? If not certain, contact your Local Programs Engineer.

Public Interest Finding (PIF) Information

Select Type of PIF – Use the pull down menu to select the PIF that fits the project.

Regulatory Reference – This field is automatically filled in when you select the PIF.

Justification or Supporting Information

Goal Statement – What is being accomplished by a tied bid

Description of Work – Provide a detailed description of the work being performed under both contracts. This description should also include a purpose and need statement that explains why the project is being proposed.

Justification or Supporting Information

Cost Effectiveness Determination – Provide an explanation of cost effectiveness or benefits.

Schedule Issues – N/A

Buy America Compliance – N/A

Environmental – Provide documentation to show that the environmental process is complete for each project.

NEPA/SEPA Logical Termini & Independent Utility – Attach a Vicinity Map and/or other plan sheets to show that each project has Logical Termini and Independent Utility.

- Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts.
- Independent Utility – A project must be able to function on its own, without further construction of an adjoining segment.

Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

Appendix 44.83 Vacant

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA-1273 -- Revised May 1, 2012

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with

the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual

was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the 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.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or

voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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.

AMENDMENT
REQUIRED CONTRACT PROVISIONS
(Exclusive of Appalachian Contracts)

FEDERAL-AID CONSTRUCTION CONTRACTS

The Federal–Aid provisions are supplemented with the following:

XII. Cargo Preference Act

1. U.S. Department of Transportation Federal Highway Administration memorandum dated December 11, 2015 requires that all federal-aid highway programs awarded after February 15, 2016 must comply with the Cargo Preference Act and its regulation of 46 CFR 381.7 (a)-(b).