Chapter 33 Emergency Relief Program

This chapter provides information and instructions on procedures applicable to emergency projects funded by FHWA under the Emergency Relief (ER) Program. Agencies should notify the Region Local Programs Engineer of damages to roadway systems caused by an emergency/disaster.

When an emergency exceeds the capability of state and local government, federal assistance can be requested from FHWA (ER and ERFO) and FEMA for the purposes noted below:

- The Federal Highway Administration (FHWA) under Title 23, USC, Section 125 provides Emergency Relief (ER) funds for the restoration of all damaged public roads and bridges except for rural minor collectors and local roads.
- FHWA's Western Federal Lands Highway Division Office directly handles ERFO funds (Emergency Relief for Federally Owned Lands) for repairs to roads on federal lands (Forest Service, Park Service, etc.) that are not federal-aid highways (rural minor collectors and local roads).
- Federal Emergency Management Agency (FEMA) provides federal funds under Public Law 93-288, the Stafford Act, for restoration of damaged roads and bridges on rural minor collectors and local roads not on federal lands.

Congress annually authorizes $100 million nationwide for FHWA's ER program. The type of events that qualify for ER funding are:

- A widespread natural disaster. Examples are floods, hurricanes, severe storms, earthquakes, volcanic eruptions, landslides, or tidal waves.
- A catastrophic failure. This is defined as the sudden and complete failure of a major element or segment of roadway system that causes a disastrous impact to transportation services. The cause must be external to the facility, such as a truck hitting a bridge and causing it to collapse.

References

- State of Washington Comprehensive Emergency Management Plan
- WSDOT *Emergency Relief Procedures Manual* M 3014, February 2012
- USDOT/FHWA *Emergency Relief Manual*, Updated May 31, 2013
- USDOT/FHWA *ERFO Disaster Assistance Manual*, October 2014
- The Stafford Act, April 2013

33.1 Steps Following a Disaster

Local Agency Process – Outlined below are the initial steps a local agency follows immediately after a disaster.

1. **Initial Notification** – A local Emergency Management Office immediately notifies the Washington State's Emergency Management Division (EMD) via the fastest means possible.
2. **Local Agency Proclamation** – A proclamation is signed by elected official(s) in accordance with the State of Washington Comprehensive Emergency Management Plan. In accordance with RCW 38.52, the state and each political subdivision (e.g., local agency) have prepared a Comprehensive Emergency Plan which is put into effect when a disaster occurs (Appendix 33.91).
3. **Recording Site Specific Costs** – It is very important to document all expenses incurred by an agency in coping with the disaster or catastrophe. Records must be site specific, identified by route, M.P. and/or by cross street identifiers within the route. Cost records must have supporting documentation for labor, equipment, and materials. Failure to document costs as outlined above is a major reason for ineligibility findings.
4. **Additional Data Gathering** – Agencies should gather evidence of the disaster such as newspaper clippings and photos. This information is helpful in the preparation of the field reports to request emergency relief funds.
5. **Requesting State Assistance** – During and immediately after the disaster, the local Emergency Management Office conducts "damage assessments" to determine the magnitude, dollar value, effects, and impacts of the emergency/disaster. There may be a site visit from the Local Programs Engineer and FHWA.

   It is very important to make timely and accurate damage reports to the EMD. These reports should describe the disaster and any local response. The "Incident Report" and "Disaster Analysis Report" forms provided by EMD and completed by the local agency (see Comprehensive Emergency Management Plan) are approved means of providing such a report. In addition, this notification should include the local agency's "Proclamation of Emergency."
6. **Proclamation by the Governor** – From the information received EMD will inform the Governor's Office. If the situation warrants state assistance, EMD will coordinate the state response to supplement the efforts of local governments. The Governor will proclaim a State of Emergency when necessary. The Governor's proclamation is required to obtain assistance under both ER and FEMA (Appendix 33.92).

From this point on, the processing of ER or FEMA projects are different, and the procedures are shown separately in the following sections.

33.2 FHWA's Emergency Relief Program Guidelines

The Emergency Relief (ER) Program is administered by FHWA through WSDOT. To qualify for ER funds the damages to be corrected must have resulted from the declared disaster or catastrophic failure (as described above) and be for emergency opening, repair, or reconstruction of roadways and bridges on federally functionally classified routes except for rural minor collectors and local roads and streets. In addition, the total federal share of statewide damage for the entire event must exceed $700,000. Individual sites must have $5,000 or more in repair costs; exceed heavy maintenance; not be a pre-existing condition; and not already programmed for construction with federal aid funding to be eligible for ER funds.

Eligible temporary or emergency repairs (Section 33.41), to minimize damage, protect facilities or restore essential traffic, accomplished within 180 calendar days after the first day of the actual disaster occurrence may be eligible for 100 percent ER funds. Repairs performed beyond 180 days after the actual occurrence of the disaster will be funded at the current program participation ratio for the federal aid route affected. Permanent restoration and any work beyond what is needed to minimize damage, protect facilities or restore essential traffic which is completed concurrently with or incidental to the emergency repairs will be funded at the current program participation ratio for the federal aid route affected.

.21 Application for Federal Assistance – WSDOT and local agencies are empowered to immediately begin emergency repairs to restore essential traffic service and to prevent further damage to the roadways. Properly documented costs will later be reimbursed if FHWA determines the disaster event and damaged sites are eligible. The determination of eligibility/noneligibility does not usually occur until approximately 60 days after the incident period. However, the following steps should be ongoing during this interval.

1. **Letter of Intent** – WSDOT prepares and transmits to FHWA a "letter of intent" to apply for ER program funds per the requirements. The letter of intent includes: an estimate of the damage on WSDOT eligible roadways; an estimate of damage on local agency's eligible roadways; and notifies FHWA that WSDOT intends to request ER funds. This request usually follows the Governor's proclamation.

2. **FHWA Division Acknowledgment** – The FHWA Division response to WSDOT directs WSDOT and local agencies to proceed with emergency repairs: to restore essential travel; to protect remaining facilities; to reduce the extent of damage; to begin preliminary engineering consisting of surveys, design, and preparation of construction plans; to perform any work which is incidental to the emergency operation; and to use local forces, contracts and/or equipment-rental contracts as necessary to perform the work.

3. **Approval of ER Events** – Upon reviewing damaged sites and/or information regarding damaged sites, FHWA Division Office will determine if the event qualifies for ER funds and will notify WSDOT of the determination typically as part of the letter of acknowledgement. WSDOT Local Programs is informed accordingly and notifies the affected local agencies.

.22 FHWA Approval of Damaged Sites – From the time the disaster/emergency occurs local agency forces are out working to protect their transportation investments. The local agency will work with the Region Local Programs Engineer (LPE) to determine if the damage is likely eligible by describing the damage, review the site or photos, and estimate repair costs. If the damage is likely eligible then they will need to work with the LPE to prepare a Detailed Damage Inspection Report (DDIR).

If the disaster damage is eligible for ER funds, DDIRs are prepared to summarize the amount and scope of reimbursement for temporary repairs, emergency repairs, incidental repairs, and permanent restoration work. To better understand the damage and the repair to the agency's transportation system, the Region Local Programs Engineer may contact the agency to coordinate an onsite visit with a FHWA representative, at a mutually agreed upon time. If an agency has good documentation (including plenty of photographs), then site visits may not be necessary.

The agency will need to prepare a package of all relevant information for review by Local Programs and FHWA. In many cases, the emergency work will already have been completed. Accurate and detailed records are required to verify the expenditures. The package is to include:

1. **Detailed Damage Inspection Report (DDIR)** – The DDIR (see Forms) is prepared by the agency and submitted for review to the LPE. The DDIR should include all pertinent information pertaining to the site's damage caused by the ER event and a breakdown of damage estimates or actual costs (as applicable) of the work identified. Completion of the DDIR is a joint effort by FHWA, WSDOT Local Programs, and local agency personnel.

   It is important that the DDIR document the scope of the approved repairs, but it is not critical that the cost estimate be precise at the time of the DDIR (the cost estimate can be refined later). It is important that the damage inspections be completed as soon after the event as possible, even if final cost data is not yet available. The approved DDIR serves as the basic justification and cost document. Each agency receives a copy of the approved DDIR.

   If the local agency agreement exceeds any amount on the DDIR by more than 10 percent or significant scope change, a revised DDIR will need to be approved by FHWA.

2. **Maps** – A vicinity map showing the location of the damage (can be agency-wide or site by site).

3. **Visual Aids** – Photographs, newspaper articles, and related documents (i.e., sketches, video tapes) are necessary to show the actual damage.

4. **Records** – Agency records must be site-specific [identified by M.P., route, or cross street identifiers] for each eligible federal aid route. Costs must be supported by labor, equipment and material records or contract documents. This is necessary to obtain full reimbursement. (These records are critical for the long-term but need not be fully complete at the time of the DDIR since the DDIRs cost estimate can be just that – an estimate.)

5. **Additional Data** – This will include any items FHWA requests. Because a significant amount of time may have elapsed since the disaster, the local agency may have to fund restoration costs while waiting for reimbursement. In many cases, the emergency work will already have been completed. Therefore, accurate and detailed records are required to verify the expenditures.

33.3 Reimbursable Expenses

.31 Eligible Costs – The following is the basic information on FHWA guidance regarding emergency relief procedures for reimbursement under the ER Program. This is also outlined in the USDOT/FHWA *Emergency Relief Manual* May 31, 2013.

Only certain items of repair or reconstruction of roads, streets, and bridges are eligible under the emergency relief program. FHWA will participate in costs when they are properly supported and documented and when such costs are directly attributable and properly allocable to ER projects. For a site to qualify it must: exceed heavy maintenance; not be a pre-existing condition; and not already be programmed for federal aid funding. For the purposes of the ER Program, heavy maintenance is repair work that is usually accomplished by highway agencies in repairing damage normally expected from seasonal or occasionally different natural conditions, doesn't disrupt essential traffic for more than a short period of time (often less than 1-2 days), and can be repaired with equipment and labor forces commonly available to State or Local maintenance crews. Work is considered already programmed if construction funding for it is included in the State Transportation Improvement Program (STIP).

The emergency conditions most frequently experienced in Washington State are those resulting from damage to highways caused by unseasonal severe storms which create flooding conditions. The processing of claims for damage by typhoons, tidal waves (or tsunamis), earthquakes, severe storms, landslides, volcanic eruptions, and other catastrophes will normally follow the criteria established for flood disasters. ER funds may participate in the emergency repair or reconstruction of: pavements or other surface courses; shoulders; embankments; cut slopes; natural and constructed drainage channels, including riprap, cribbing, or other bank control features; guardrail; bridges; retaining walls; signs and traffic control devices; culverts; bike and pedestrian paths, and fencing.

The ER program will only fund those activities: beyond heavy maintenance; required to restore essential travel; to prevent additional damage to the roadway; and work required to restore the roadway to its pre-disaster condition. Types of these eligible costs are as follows:

1. **Debris Removal** – This includes clearing debris from the traveled way, the cut and fill slopes, the clear zone and in some cases the drainage systems associated with damaged project sites.

   This does not include the clearing of trees and other debris from all areas within the right of way. If debris is not obstructing traffic, in safety clear zones, or a drainage facility, removal of that debris would not be eligible for ER funds. Only debris on the facility or posing an immediate threat (including the immediate clear zone) to the facility will be considered emergency repair eligible for 100% reimbursement.

All other debris removal will be considered permanent repair and will be reimbursed at the pro-rata. In the event that debris removal (both emergency and permanent) is completed at the same time and cannot be documented separately, a reasonable negotiated split between emergency and permanent must be determined that is acceptable to FHWA or all debris removal at the site will be treated as permanent restoration and reimbursed at the pro-rata share for the facility.

If an ER event is declared to be an emergency or a major disaster by the President under the Stafford Act and debris removal is eligible for assistance under Sections 403, 407, or 502 of the Act, debris removal previously eligible for ER funding may no longer be eligible if it is eligible for FEMA funding instead. Presidential declarations are not common in Washington State.

2. **Traffic Control** – For ER eligible roadways traffic control devices such as barrels, barricades and signs; the establishment of detour routes; and enforcement of detours and road closures by law enforcement personnel are eligible for funding. ER reimburses the local agency and the state enforcement agencies for regular and overtime rates on ER eligible routes for performing disaster related traffic control activities. Documentation of hours, routes, etc., is required for reimbursement.

3. **Landscaping** – Landscaping and functional planting are eligible when incidental to otherwise eligible damage.

4. **Active Construction Contracts** – Damage due to the ER event within the limits of an active construction contract may also be eligible for ER funds. To be eligible damage must be due to the event, involve project elements that are in place and accepted by the owner, and clearly not be the responsibility of the contractor (e.g., not due to inadequate protection of disturbed areas). The work must be done by change order (Section 52.5).

5. **Detour Routes** – Establishment or construction of detours is eligible for ER funding if it can be shown that the detour will relieve excess traffic directly attributed to the eligible disaster. To be eligible, the detour must be designated which means the detour route is officially signed to reroute traffic around the damaged roadway. Routine maintenance of detours is not eligible, but repair of detour routes whether or not they are federal aid eligible, is eligible for ER funding. Ferry or transit service may be eligible where an alternate existing route may not be practical.

6. **Administrative Expenses** – Administrative expenses as listed below are also eligible for reimbursement.

    a. **Regular and Extra Employees** – Regular salaries, overtime salaries and wages of all the regular and extra employees directly engaged in work on ER projects are eligible for reimbursement. Timekeeping procedures should provide for allocating employees' time to projects and/or other activities each day on an hourly basis. The timekeeping document, such as a time slip, time and attendance report, or time book, is the source document which must be available for examination by audit personnel to support direct labor costs claimed on any ER project. The document should be signed by a responsible employee having knowledge that the time distribution is accurately reported.

b. **Payroll Additives** – Usually referred to as a labor surcharge, a set percentage over and above the total direct labor costs charged to a project is eligible for participation. This surcharge is to cover costs of various types of leave allowances, industrial accident insurance coverage and other employee benefits. The allowable percentage rates will consist of the agency's calculated rates which normally vary from year to year. Therefore, the records used in developing percentage rates should be preserved under suitable control conditions to assure availability for examination when requested. The acceptable percentage rate may be applied only to direct labor costs.

7. **Engineering and Right of Way** – Only that preliminary engineering, right of way, and construction engineering that are necessary, reasonable, and directly attributable to repair of eligible damages are eligible for ER reimbursement. Administrative costs are not eligible.

8. **Traffic Damage** – Generally damages of roadway surfaces due to traffic damage is not eligible for ER funds, but may be for surface damage repair (1) on any public road when it is caused by vehicles making repairs to federal eligible roadways, (2) on any public road officially designated a detour route around a damaged federal eligible roadway, and (3) on any federal eligible roadway when damage is caused by vehicles responding to a disaster.

9. **Overlays** – Where entire sections of roadway are damaged and need to be constructed, new surfacing is eligible. Roadways submerged during flooding, but suffering no significant damage, are not eligible.

10. **Raising Grades** – For traditional flooding, temporary work, fill material and minimum riprap to raise roadway grades to maintain essential traffic service during flooding is eligible. Roadways temporarily raised to maintain essential traffic service and that suffer no significant damage as a result of the flood and work to permanently provide a higher grade (recompact fill and provide permanent surfacing) are not eligible. Contact your Region Local Programs Engineer to have them consult with FHWA on raising grades in basin flooding situations.

11. **Slides** – The removal of rock and mud slides is eligible. To be eligible for correction to provide a safe roadway, such a slide must be associated with the overall natural disaster or by itself qualify as a natural disaster. Projects to stabilize the slide area to protect the roadway or to relocate the roadway are eligible when justified as a betterment.

12. **Traffic Control Devices** – The cost of repair and replacement of traffic control devices (traffic signal, traffic control signs) is eligible only if such damage exceeds heavy maintenance.

13. **Roadside Appurtenances** – The cost of repair and replacement of roadside appurtenances (guardrail, bridge rails, impact attenuators, right of way fences, etc.) is eligible if such damage exceeds heavy maintenance.

14. **NEPA Process** – An ER repair project may need to incorporate added features to mitigate impacts of associated items such as wetlands, noise, endangered species, etc. A general rule of thumb to follow: if the added feature is related to a betterment that is eligible for ER participation, then the mitigation feature is probably eligible for ER funding; if the betterment is not justified for ER funding, any added feature related to the betterment is probably not eligible for ER funding. Contact your Region Local Programs Engineer to have them consult with FHWA on your specific situation.

15. **Outside of the Roadway Right of Way** – Generally, damage repair activities outside the roadway right of way is not eligible for ER funding. The exception to this would be work (riprap, bank protection, etc.) associated with a stream channel adjacent to a roadway when the work is directly related to protection of the roadway.

16. **Supplies and Materials** – Engineering and general office supplies of an expendable nature, charged from stock or purchased for a particular project, and properly identified on the stock-issue slip or vendor's invoice with the project charged, are eligible for ER funding participation.

17. **Equipment** – The use of applicant-owned equipment or equipment owned by, and rented from, another public entity, or equipment rented from commercial sources (provided rental costs are reasonable) which is necessary for the work authorized under an ER project will be eligible for participation.

18. **Indirect Cost** – Costs that are not allocable to a specific project such as a general overall assessment of damage, administration, overhead, general supervision, contract administration other than construction engineering, and project planning and scheduling are considered indirect costs that may be eligible for ER funding if the agency has an indirect cost rate that complies with 2 CFR 200. For additional guidance concerning indirect costs, please contact your LPE.

.32 Ineligible Costs – The ER Program is intended to correct disaster damage to highways. The ER program does not provide emergency transportation services (e.g., ambulances, helicopters), compensation for material, equipment, or economic losses (e.g., stockpiled material, maintenance equipment, lost revenue). Also, non-federal eligible roads, bridges and trails are not eligible for ER funds but can be submitted to FEMA for reimbursement. Below are descriptions of work that is ineligible for reimbursement:

1. **Heavy Maintenance** – The purpose of the ER program is to address major, widespread damage that disrupts essential traffic along Federal-aid highways. When a disaster has caused damage requiring heavy maintenance or work frequently performed by the applicant's maintenance crews, repairs are usually not eligible. Heavy maintenance is work which is less severe, doesn't disrupt essential traffic for more than a short period of time (often less than 1-2 days), and usually can be performed by agencies in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences. It includes work at a site, required as a direct result of a disaster, that can reasonably be accommodated by an agency's maintenance, emergency or contingency program. For the purposes of determining if work at a site is heavy maintenance or work eligible under the ER Program, the type of work, the volume or amount of work, the cost per site, and the abilities of the local agency will be considered.

2. **Snow Removal** – Snow removal is not eligible for ER funds.
3. **Prior Scheduled Work.** Work already scheduled for repairing or replacing deficient facilities with federal aid funds, which are damaged during a disaster, will not be eligible for ER funds. Work is considered already scheduled if construction funding for it is included in the STIP. This work should be funded as originally intended.
4. **Traffic Damage** – Repair of roadway surface damage caused by traffic, even if the roadway was inundated or the subgrade saturated, is not eligible, except as noted in Section 33.31 item 8.
5. **Frost Heaving** – Damage to roadway subbase and base materials due to inundation or because of freezing and resultant frost heaves, even if the roadbed has been saturated by flood waters, is not eligible for repair using ER funds.
6. **Applicant-Owned Material** – Replenishment of destroyed or damaged stockpiles of materials for both maintenance and construction that have not been incorporated into the roadway is not eligible for replacement under the ER program. Repair or replacement of damaged facilities such as maintenance sheds or equipment is not eligible for ER funds.
7. **Erosion Damage** – Minor erosion damage due primarily or wholly to rainfall and resulting from surface saturation of slopes and embankments, rather than flood waters, is considered heavy maintenance and is not eligible.
8. **Mitigation/Preventative Work Prior to Disaster** – Preventative work to avoid damage to a highway facility in anticipation of a disaster is not eligible for ER funding (e.g., work to prevent scour at a bridge site in anticipation of high rainfall and potential flooding).
9. **Catastrophic Failure from Internal Cause** – If the catastrophic failure is due to an internal cause, such as gradual and progressive deterioration or lack of proper maintenance, it is not eligible for ER funding.
10. Project delay costs or lost toll revenues are not eligible.
11. Radiological contamination with no incidental structural damage is not eligible for ER funding.

33.4 Types of Emergency Relief Work

.41 Temporary Emergency Repairs – The intent of temporary operations, including emergency repairs, is to restore essential traffic which cannot wait for a finding of eligibility and programming of a project. Emergency repair work should be accomplished in a manner which will reduce additional work required for permanent repairs. Temporary emergency repair work, accomplished within the first 180 days after the occurrence of the disaster, may be eligible for 100 percent federal aid.

Local agencies will need to coordinate with resource agencies for accelerated permit requirements. Local agencies will need to meet all local and state requirements.

The use of ER funds for temporary repairs to roadways will normally be limited to the amount necessary to bring the washed-out fills and slip-outs back to grade with a gravel surface. However, in most cases these emergency repairs to roadways will not be constructed to true line and grade. They will usually follow the terrain and be

constructed in the easiest and fastest manner. The repair to the road, nevertheless, should be good enough so traffic can travel over it safely at a speed reasonable for the site conditions. Where routes handle heavy traffic, an appropriate type of bituminous surface as a temporary repair will be eligible for short sections of roadway.

.42 Incidental Restoration – Incidental restoration that is more economical or practical to perform as an associated part of the emergency repairs may be eligible. This incidental restoration work can be performed with the emergency work provided it is properly documented and authorized in the DDIR. Incidental restoration work will be funded at the prorata share.

.43 Permanent Restoration – Permanent restoration is funded at the prorata share for the route regardless of when the work is done. Permanent restoration shall be administered using normal Federal aid procedures that include written authorization, NEPA clearance, design approval, permits, right of way certification, PS&E, advertisement period, etc. Permanent restoration work must begin within two federal fiscal years after the end of the federal fiscal year in which the event occurred.

Permanent restoration may involve one or more of the following categories of work:

1. **Restoration-In-Kind** – The ER program provides for repair and restoration of highway facilities to predisaster conditions. Restoration-in-kind is the expected predominant type of repair to be accomplished with ER funds. Any additional features or changes in character from that of the predisaster facility are generally not eligible for ER funding unless they can be justified because of construction, economy, and prevention of future recurring damage or technical feasibility.

2. **Replacement In-Kind** – If WSDOT and FHWA agree that it is not technically or economically feasible to restore a damaged facility to its pre-disaster condition, a comparable replacement facility may be warranted. Such replacement facility (roadways and/or bridges) should be designed to the current geometric and construction standards. In addition, the replacement facility should be evaluated and incorporating cost effective features that will make the facility more resilient and reduce the risk of damage from future events should be considered.

   ER participation may be prorated. Where the replacement project exceeds ER eligibility limitations, the ER share of project cost will be limited to the estimated cost of the ER eligible replacement roadway or bridge.

   Where relocation is necessary, each case must be considered carefully to determine what part of the relocation is eligible for ER funding. When relocation is being considered, the new location should be evaluated to determine its susceptibility to climate change damage.

3. **Betterments** – Betterments are defined as (1) added protective features, such as the rebuilding of roadways at a higher elevation, or the lengthening of bridges, or (2) changes which modify the function or character of the facility from its pre-disaster condition, such as additional lanes, or added access control. Betterments are generally not eligible for ER funding unless justified on the basis of economy, suitability and engineering feasibility and reasonable assurance of preventing future similar damage. Betterments should be obvious and quickly justified

without extensive public hearing, environmental, historical, right of way or other encumbrances. The justification must weigh the costs of the betterment against the probability of future recurring eligible damage and repair costs.

Upgrading that results from construction of replacement facilities to current standards as defined above is not considered a betterment requiring further justification. However, with respect to roadways, increases in capacity or a change in character of the facility would be considered betterments and are not justified for ER participation.

Betterments resulting from environmental or permit requirements beyond the control of the agency are eligible for ER funds, if these betterments are normally required when the agency makes repairs of a similar nature in its own work.

Minor relocations and alignment shifts are frequently adviswable and are generally eligible for ER participation. However, any design changes made to avoid damage which could be expected to occur infrequently is questionable. Added features of appropriate protection, such as slope stabilization, slope protection and slide prevention measures wherever practicable, must have proper support. Slide stabilization work has been declared ineligible in problem areas where slides recur regularly. The cost of monitoring slide stabilization measures after completion of the initial stabilization is not eligible. ER participation in the initial construction does not create a continuing ER responsibility for future additional work.

Betterments which are eligible for reimbursement will be addressed, agreed to and documented on the DDIR or approved separately by WSDOT and FHWA in response to a local agency request justifying the proposed betterment.

4. **Replacement of Culverts** – Upgrading culverts to current standards must be specifically related to eligible disaster damage repair. Damaged culverts are eligible for repair in kind. Destroyed culverts are eligible for replacement to current standards. Area-wide upgrading of deficient culverts on an area or route basis is not eligible.

5. **Deficient Bridges** – This category includes structural deficiencies only. It does not consider waterway opening, functional obsolescence or serviceability, etc. Permanent repair of a structurally deficient damaged bridge is eligible for ER funding if the replacement is not already under construction or if the construction phase of the bridge replacement is not scheduled in the approved STIP.

   ER eligibility criteria for two common situations are provided below:

   a. Bridge is damaged and is repairable.
      - Reasonable emergency repair to restore travel.
      - Permanent repair of damage if such repair also removes the structural deficiency.
      - Permanent repair of disaster damage if other funds are used to simultaneously correct the structural deficiencies. This involves situations where undamaged portions of a bridge still render the bridge structurally deficient.

- No permanent repair if construction phase of replacement bridge is scheduled in the STIP at the time of the event.
- No permanent repair if bridge was deficient at the time of the event and the bridge will remain deficient after permanent repairs are made.

b. Bridge is destroyed or repair is not feasible.

- Reasonable emergency repair to restore traffic.
- New comparable replacement structure to current design standards and to accommodate design-year traffic volume if bridge is not scheduled for replacement.
- No permanent repair if construction phase of a replacement bridge is scheduled in the STIP at the time of the event.

33.5 Contracts

The onslaught of a disaster requires quick reaction by local agencies to protect the traveling public and the remaining facility. The initial actions taken by local agency personnel are usually reimbursable if they meet the ER program requirements. The initial repairs may be accomplished using local agency forces, solicited contracts and/or sole source contracts, as described below. These are all allowable during the initial impact to agencies. When agencies use these methods, documentation of their procedures are required for reimbursement.

Permanent restoration work normally should be undertaken by competitively bid construction contracts (Chapter 52). All federal requirements (i.e., FHWA-1273, Title VI, Davis-Bacon, Buy America, Federal Wage Rates, DBE, etc.,) must be included in the same manner as a typical nondisaster federal aid project.

.51 Local Agency Forces – Due to the emergency character of the work, state and local agency forces (Chapter 61) and/or negotiated equipment rental contracts with owner/operators may be used in handling a considerable portion of the emergency repairs. An owner/operator is defined as someone who owns and operates their own equipment, with no other employees on a payroll, at a negotiated hourly operated rate. Local agencies may supplement their own forces by using the Public Works Emergency Response Mutual Aid Agreement or other interlocal agreements as appropriate. The intent is to restore essential traffic and stabilize any hazardous conditions caused by a disaster.

A formal finding for local agency forces work for temporary emergency repairs is not required. WSDOT approval is required for reimbursement of local agency forces work on permanent restoration work.

.52 Solicited Contract – This type of contract may be warranted due to the emergency character of the work. A minimum of three contractors/material suppliers are contacted and asked to submit bids on specific units of work. A source for these contractors would be the local agency's small works roster. These contracts shall be based on force account procedures (*Standard Specifications* 1 09.6), unit bid items or a combination of the two. These contracts will have a set of plans and specifications which may be abbreviated but must contain all federal requirements (Section 33.63).

The intent is to restore essential traffic and stabilize any hazardous conditions caused by a disaster or as noted on the DDIR. Unless emergency circumstances make it impossible or unfeasible to do so, provisions of 23 USC 112(c) which requires a sworn statement of noncollusion shall apply.

Likewise, a written summary must be prepared showing how the solicitation was done, who was contacted, and the responses by the contractors/material suppliers.

The agencies may use the Emergency Work Contract template (Appendix 33.94) for the purpose of Temporary Emergency Repairs and / or Incidental Restoration work.

.53 Sole Source Contract – Approval by WSDOT is required to use this type of contract. The approval may be given verbally or at the time of the onsite review (DDIR). The intent is to restore essential traffic and stabilize any hazardous conditions caused by a disaster or as noted on the damage inspection report. These contracts shall be based on force account procedures (*Standard Specifications* 1-09.6), unit bid items or a combination of the two. These contracts will have a set of plans and specifications which may be abbreviated but must contain all federal requirements (Section 33.63).

The type of work allowed for using a sole source contract include:

- Only one contractor in the area to perform the work.
- A contractor on-site under a current contract.
- The work is defined as specialty work.

Documentation is required justifying the use of a sole source contract.

The solicited contracts and sole source contracts must verify contractors status with the System for Award Management (SAM) to ensure the contractors are not excluded from working on federal aid contracts (Section 46.27).

33.6 Additional Project Requirements

.61 Design Standards – Reconstruction of damaged roadway and bridge facilities must be to adequate standards, including appropriate safety features. Reconstruction of extensively damaged facilities, including betterment projects when adequately justified, should be to the current design standards. Roadways and bridges may be replaced with a facility which meets current geometric and construction standards required for the type and traffic volume which such facility will carry over its design life.

.62 Environmental Impact Assessment – Emergency repairs during or immediately after a natural disaster are generally classified as categorical exclusions as are general permanent repairs if they are replacements in kind (23 CFR 771.117(c)(9) and 40 CFR 1508.4).

.63 Abbreviated Plans – The use of abbreviated plans may be acceptable as long as it provides essential information necessary to describe the work to be accomplished and determine the reasonableness of unit prices for contract or force account work.

33.7 Funding

WSDOT Local Programs will process all the required data and submit it to FHWA for fund authorization. A standard funds request package should include:

- Project checklist with supporting data as appropriate (Chapter 21).
- Pictures of the affected site (before and after).
- A **signed** copy of the DDIR.

When submitting projects for funding, multiple sites on the same federal route or area within a local agency's jurisdiction may be grouped together under one Local Agency Agreement and Project Prospectus provided individual site information is included. Headquarters' approval for grouping sites is required prior to submittal.

Project fund requests which exceed the original DDIR must have a detailed explanation of the additional work required to complete the work. If the work done is outside the scope of the DDIR, concurrence by FHWA will need to be coordinated through the Region Local Programs Engineer prior to fund authorization. Any work to be done per the finding of a geotechnical report needs to be pre-approved by FHWA through the Region Local Programs Engineer.

All projects which involve a contract must follow the guidelines outlined in Chapter 46. All further action, including processing, billing, and payment, will be in accordance with Chapter 23.

Final vouchers, inspection, audit, and project closure are accomplished in accordance with Chapter 53.

33.8 FEMA Program Guidelines

Federal Emergency Management Agency (FEMA) provides funding for restoration of damaged roads and bridges not eligible for ER, individual assistance and public assistance. Off system roads, bridges and trails (no matter where the initial funding came from) are eligible for FEMA reimbursement. Although neither FHWA nor WSDOT is involved in disaster relief project funding for non-federal aid roads/streets, this section has been included for informational purposes. For additional information, call 1-800-562-6108.

Federal share payable is 75 percent of the eligible costs for damage described under FEMA's emergency activities. Overtime only, on non ER eligible routes, for debris removal, emergency protective measures and traffic control is also reimbursable at 75 percent by FEMA.

The FEMA program provides federal reimbursement of eligible costs to repair, restore, reconstruct or replace damaged roadway facilities not eligible for ER. This includes emergency opening and permanent restoration.

Before funds are made available, the Governor must proclaim a state of emergency and request assistance from the President for assistance. The President must declare either an emergency or a major disaster.

The Disaster Recovery Manager of FEMA and Washington State's Governor's Authorized Representative are responsible for determining program eligibility based on criteria established by the federal government. The Governor's Representative is responsible for the program's administration.

Applying for Federal Assistance

1. **Governor's Request for Federal Assistance** – Based on the preliminary damage assessments, the EMD prepares the Governor's request letters, for the Governor's signature, which are submitted through FEMA to the President of the United States.
2. **Presidential Declaration** – If the President determines that the situation warrants federal assistance, the President declares either an emergency or major disaster and invokes the applicable sections of the FEMA regulations.
3. **Federal/State Agreement** – After the President makes the declaration of emergency, the Governor and the FEMA Administrator sign a federal/state agreement for federal, state and local participation.

Actions After Federal Funding Approval

1. **Preparation of Damage Survey Reports (DSR)** – EMD and FEMA jointly establish disaster field offices to coordinate federal and state response.
2. **Applicant Briefings – Eligibility Determination** – The Governor's Representative and Federal Disaster Recovery Manager will conduct applicant briefings. These briefings are for local elected officials, program administrators and accountants/ bookkeepers. Local representatives are told what kind of assistance they will receive and the process to obtain the assistance. WSDOT Local Programs will provide a representative at the briefing to discuss the ER program.
3. **Determination Review** – In most cases, if not all, the Governor's Representative and the Disaster Recovery Manager will review and determine eligibility of the DSRs in the disaster field office. Those not determined in the disaster field office will be followed up by both the Governor's Representative and the Disaster Recovery Manager at a later date.
4. **State Requirements** – The Governor's Representative will coordinate with fisheries and wildlife departments to review each project's DSR and determine if a hydraulic permit approval is required.
5. **Project Modifications** – The applicant does the work and if a time extension, scope, or fiscal modification is required, the applicant makes a request to the Governor's Representative for consideration.
6. **Project Closure** – When the work has been completed, the applicant submits a Statement of Documentation to the Governor's Representative. The Governor's Representative determines whether or not final inspections need to be conducted based on program guidelines. Projects will be audited as part of the Single Audit Act by the State Auditors Office. Once all the program requirements have been met and final payment made, the Governor's Representative will send a close-out letter to the applicant.

When the federal audit or review is completed, the FEMA Regional Office forwards the reimbursement request to their National Office. The FEMA National Office forwards the final payment through the state's EMD, and closes out the project application.

33.9 Appendices

33.91 Local Agency Proclamation
33.92 Governor's Proclamation
33.93 Local Agency Detailed Damage Inspection Report
33.94 Emergency Work Contract

Date

WHEREAS, the _____ County Department of Community Development/Division of Emergency Management has reported to the Board of County Commissioners, that beginning on _____, 19___, unusual weather conditions, consisting of heavy snowfall followed by rain, have caused a disaster by creating extensive flooding in parts of _____ County; and

WHEREAS, extensive damage has occurred and is still occurring to county roads and bridges, private roads, homes, businesses, and farmland; and

WHEREAS, persons and property are and will be damaged unless further efforts are taken to reduce the threat to life and property; and

WHEREAS, there is a present emergency which necessitates activation of the _____ County Disaster Preparedness Plan and utilization of emergency powers granted pursuant to RCW 36.40.180 and RCW 38.52.070(2), therefore

BE IT RESOLVED BY THE BOARD OF _____ COUNTY COMMISSIONERS:

SECTION 1

It is hereby declared that there is an emergency due to the flooding conditions in _____ County. Therefore, designated departments are authorized to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property, and provide emergency assistance to the victims of such disaster.

SECTION 2

Each designated department is authorized to exercise the powers vested under Section 1 of this resolution in the light of the urgency of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements).

Board of County Commissioners

Click here to enter text. County, Washington

Chairperson, Click here to enter text.

Commissioner, Click here to enter text.

Commissioner, Click here to enter text.

Note: Mailed to all county newspapers on above date.

cc: Washington State Emergency Management, re. notification by phone
Washington State Department of Transportation, Region Local Programs Engineer

JAY INSLEE
Governor

STATE OF WASHINGTON
Office of the Governor

PROCLAMATION BY THE GOVERNOR

15-15

WHEREAS, from November 13 through 18, 2015, a series of severe storms struck Washington State, producing high winds and extreme rainfall resulting in major flooding, saturated soils, landslides, stream bank and slope erosion, fallen tree limbs, broken and uprooted trees, and flying debris; and

WHEREAS, throughout the State, these storms caused three confirmed deaths, injuries to citizens, significant power outages, evacuations, temporary road closures and detours, rail line closures, ferry system and airline cancellations, and extensive damage to homes, businesses, public utilities, public facilities, electrical power systems, infrastructure, and property, in addition to creating sheltering needs for impacted citizens, threatening fragile and at-risk populations, and jeopardizing the health and safety of citizens with special medical needs; and

WHEREAS, erosion, landslides, and flooding resulting from these storms has been exacerbated in some areas of the State due to major wildfire damage in July through September 2015 that left large areas of land burned clear of trees and other vegetation; and

WHEREAS, blocked and damaged roadways caused by these storms resulted in limited access impacts complicating the provision of response and recovery efforts by emergency responders, businesses, and utilities to address the aftermath of these storms; and

WHEREAS, state agencies and local jurisdictions are coordinating resources to address damaged and blocked roadways, assess damage caused by the storms, and implement damage repairs; and

WHEREAS, the storm damage and its effects continue to impact the life and health of our citizens, as well as the property and infrastructure of Washington State, all of which is a public disaster that affects life, health, property, or the public peace; and

WHEREAS, the Washington State Military Department activated the State Emergency Operations Center, implemented emergency response procedures, and is coordinating resources to support local officials in alleviating the immediate social and economic impacts to people, property, and infrastructure, and is continuing to assess the magnitude of the event.

NOW, THEREFORE, I, Jay R. Inslee, Governor of the state of Washington, as a result of the above-noted situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby proclaim that a State of Emergency exists in all counties in the state of Washington, and direct the plans and procedures in the *Washington State Comprehensive Emergency Management Plan* be

implemented. State agencies and departments are directed to utilize state resources in accordance with the Washington State Comprehensive Emergency Management Plan and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the event.

As a result of this event, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of the Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department in addressing this event. Additionally, the Washington State Military Department, Emergency Management Division, is instructed to coordinate all incident-related assistance to the affected areas.

Signed and sealed with the official seal of the state of Washington this 18th day of November, A.D. Two-thousand and Fifteen at Olympia, Washington.

By:

/s/

Jay Inslee, Governor

BY THE GOVERNOR:

/s/

Secretary of State

Washington State Department of Transportation

Detailed Damage Inspection Report
FHWA Emergency Relief

Applicant Click here to enter text.	County Choose an item.	FHWA Disaster No. Click here to enter text.
Location of Damage Click here to enter text. Route is on BIA's inventory classified as Tribal Transportation Facility (TTF): ☐	Milepost From MP To MP	Revision Number Click here to enter text.
Date, Cause, and Description of Damage Click here to enter text.		Local/State Project or No(s) Click here to enter text. Functional Class Choose an item.

A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. If the cost estimate (including preliminary and construction engineering) increases by 10% a revised DDIR must be approved by FHWA.

Temporary/Emergency Repair (work that is necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities.) Click here to enter text. Method of Work: ☐ Local/State Force Account ☐ Emergency Contract		Temporary/Emergency Repair ☐ 100% Federal Aid Original Estimate Click here to enter text. Revised Estimate Click here to enter text.
Incidental Repair (The remaining portion of the work that is completed during the temporary/emergency repair.) Click here to enter text. Method of Work: ☐ Local/State Force Account ☐ Emergency Contract		Incidental Repair Federal Aid % ☐86.5% ☐90.66% ☐100% Original Estimate Click here to enter text. Revised Estimate Click here to enter text.
Permanent Restoration (This work is eligible for Federal participation at the normal pro-rata share and is administered using normal Federal-aid procedures. Click here to enter text. Method of Work: ☐ Local/State Force Account ☒ Contract		Permanent Restoration Federal Aid % ☐86.5% ☐90.66% ☐100%
	Preliminary Engineering	Click here to enter text.
	Right of Way	Click here to enter text.
	Construction	Click here to enter text.
	Total Perm. Restoration	Click here to enter text.
	Revised Total Perm. Restoration	Click here to enter text.
	WSDOT Annual Indirect Cost Rate	Click here to enter text.
	Total Estimated Cost	Click here to enter text.
	Revised Total Estimated Cost	Click here to enter text.
Recommendation for Eligibility ☐ Yes ☐ No	Local Agency Representative	Date
Recommendation for Eligibility ☐ Yes ☐ No	State Representative	Date
FHWA Recommendation ☐ Eligible ☐ Ineligible	FHWA Engineer	Date

DOT Form 300-001
Revised 08/2019

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Instructions for filling out form

Location of Damage: Provide the name or route number of road, bridge number(s) if applicable and any other pertinent information to help identify the location of the damage.

Description of Damage: Describe how the event caused the damage, what damage the event caused, and why the damage is eligible for ER funding.

Functional Classification: Select from dropdown See functional classification mapping application (http://www.wsdot.wa.gov/mapsdata/travel/hpms/functionalclass.htm).

Rural or Urban Interstate
Rural or Urban Other Frewy/Exprwy
Rural or Urban Principal Arterial
Rural or Urban Minor Arterial
Rural or Urban Major Collector
Urban Minor Collector

Temporary/Emergency Repair: Describe the work and provide a total cost estimate of work that is necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. Work in this box typically requires minimal preliminary engineering, geotechnical studies, structural analysis, or environmental review. These repairs are usually within the capabilities of the State and local maintenance forces and most will be performed on a force account or an emergency contract basis. Temporary/Emergency Repair Work is categorically excluded from NEPA requirements under 23 CFR 771.117(c)(9). This work must meet the emergency provisions of all other environmental regulations, such as ESA, Section 106, 4f. Most of these emergency provisions require that the regulatory agency be notified prior to beginning work.

Incidental Repair Work: Describe the work and provide a total cost estimate of work that was completed incidental to the Temporary/Emergency Repair Work. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. This work was not necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities; this work is eligible for federal participation at the normal pro rata share for the facility type. Work in this box typically requires minimal preliminary engineering, geotechnical studies, structural analysis, or environmental review. These repairs are usually within the capabilities of the State and local maintenance forces and most will be performed on a force account or an emergency contract basis. Incidental Repair Work is generally categorically excluded from NEPA requirements under 23 CFR 771.117(c)(9). This work must meet the emergency provisions of all other environmental regulations, such as ESA, Section 106, 4f. Most of these emergency provisions require that the regulatory agency be notified prior to beginning work.

Permanent Restoration Work (Describe the work and provide a cost estimate for work performed as part of the Permanent Restoration. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. Permanent restoration shall be administered using normal Federal aid procedures that include written authorization, NEPA clearance, design approval, permits, right of way certification, PS&E, advertisement period, etc. The federal participation on eligible work will be at the normal pro rata share for the facility type (Interstate 90.66% Non-Interstate 86.5%) regardless of when the work is done. Betterments typically fall into this category of work; proper justification documentation for the betterments should be attached. Funding for this work may not be needed immediately (especially construction funding). Include documentation if funding is not needed immediately.

DOT Form 300-001
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Washington State Department of Transportation

Emergency Work Contract

THIS AGREEMENT, made and entered into this _____ day of _____, _____

between the (Agency name) _____ and

Contractor's name & address:

Herein called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials,and equipment for:

Description of work:

in accordance with directions of the Engineer and in accordance with the Standard Specifications for Road and Bridge Construction (20 ___), Amendments to the Standard Specifications and the Special Provisions which are, by this reference, incorporated herein and made a part hereof and, shall perform any changes in the work in accord with the Contract Documents.

II. The (Agency name) _____ hereby promises and agrees with the Contractor to employ and does employ the Contractor to do and cause to be done the above-described work and to complete and finish the same in accordance with the provisions of the of the Standard Specifications for Road Bridge and Municipal Construction, in the manner and upon conditions provided for in this contract.

III. The Contractor for himself and for his heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the Contract, and shall finish and complete all work describe in the contract no later than thirty (30) working days from the executed day and year first written below.

IV. The Contractor agrees to abide by all Federal Regulations as required including prevailing wage rates, Buy America policy, Americans with Disability Act (ADA), Davis-Bacon, and all provisions of the attached form 1273 incorporated herein as part of this contract.

V. It is further provided that no liability shall attach to the Agency by reason of entering into this contract, except as provided herein.

VI. A contract Bond will be required: Yes ☐ No ☐

Title VI

The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Non-Collusion Declaration

By signing this contract, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

NOTICE TO ALL CONTRACTORS
To report rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the authorized officer of _____ has caused this instrument to be executed by and in the name of the said Agency on the day and year first below written.

Executed by the Contractor this [ ] day of [ ] , [ ] .

CONTRACTOR		LOCAL AGENCY	
Signature		Signature	
Printed		Printed	
Title		Title	
Date		Date	

(August 6, 2012)
In accordance with Buy America requirements contained in 23 CFR 635.410, the major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework.

Minor amounts of foreign steel and iron may be utilized in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or $2,500.00, whichever is greater.

American-made material is defined as material having all manufacturing processes occurring domestically. To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.

If domestically produced steel billets or iron ingots are exported outside of the area of coverage, as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.

Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.

Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

The following are considered to be steel manufacturing processes:

1. Production of steel by any of the following processes:

    a. Open hearth furnace.

    b. Basic oxygen.

    c. Electric furnace.

    d. Direct reduction.

2. Rolling, heat treating, and any other similar processing.

3. Fabrication of the products.

06051.GR1 1

a. Spinning wire into cable or strand.

b. Corrugating and rolling into culverts.

c. Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The certification shall be on DOT Form 350-109EF provided by the Engineer, or such other form the Contractor chooses, provided it contains the same information as DOT Form 350-109EF.

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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.

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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.

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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.

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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.

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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.

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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,

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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.

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

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.

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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

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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;

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(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

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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.

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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.

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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.

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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.

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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).

Amendment to Form FHWA 1273
Revised January 25, 2016