

**FOR INFORMATIONAL PURPOSES ONLY - DON'T USE FOR BIDDING**

**Department of Public Works Nassau County, NY  
Bid Sheet for Contract: H63035-01G**

Item No	Engineers Estimate	Item Description			
201.06	1.00 LS	Clearing and Grubbing	For:		
203.02	345.00 CY	Unclassified Excavation and Disposal	For:		
203.07	175.00 CY	Select Granular Fill	For:		
304.1011 9917	85.00 CY	Subbase Course, Type 1011-2	For:		
402.0000 14	8.00 QU	Plant Production Quality Adjustment HMA Items	For:		
402.0681 04	60.00 TON	6.3 F1 Top Course HMA, 80 Series Compaction	For:		
402.1989 04	90.00 TON	19 F9 Binder Course HMA 80 Series Compaction	For:		
407.0102	80.00 GAL	Diluted Tack Coat	For:		
418.7603	550.00 LF	Asphalt Pavement Joint Adhesive	For:		
555.89SP	13.00 CY	Precast Concrete Accent Trim	For:		
560.1009 0008SP	10,013.00 SF	Cleaning Historic Stone Masonry and Concrete Surfaces	For:		
560.1201 0039SP	16,000.00 LF	Historic Stone Masonry Repointing	For:		
560.4000 0008	893.00 SF	Repair Stone Masonry	For:		
603.9804 0007	80.00 LF	Polyvinyl Chloride (PVC) Sewer Pipes and Fittings, 4"	For:		

Nassau County DPW

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Contract No. H6035-01G  
Sands Point Bridge Improvements

# FOR INFORMATIONAL PURPOSES ONLY-DON'T USE FOR BIDDING

Department of Public Works Nassau County, NY  
 Bid Sheet for Contract: H63035-01G

Nassau County DPW

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Item No	Engineers Estimate	Item Description			
604.0600 0006	200.00 LF	Trench Drain System	For:		
607.9800 10111	111.00 LF	Temporary Chain Link Fence	For:		
619.01	1.00 LS	Basic Work Zone Traffic Control	For:		
619.04	8.00 EACH	Type III Construction Barricade	For:		
619.1001 03	50.00 LF	Interim Pavement Markings, Stripes (Removal Tape)	For:		
619.1105 12	2.00 Each	(PVMS) Standard Size-Full Matrix (LED) No Optional Equipment Specified, Cellular Communications	For:		
619.1715	840.00 LF	Temporary Positive Barrier-Category 5 (Pinning Prohibited)	For:		
619.24	1.00 LS	Nighttime Operations	For:		
625.01	1.00 LS	Survey Operations	For:		
637.13	12.00 MNTH	Engineer's Field Office - Type 3	For:		
697.03	75,000.00 DC	Field Change Pavement (FCP)	For:		
699.0400 01	1.00 LS	Mobilization	For:		

Contract No. H6035-01G  
Sands Point Bridge Improvements

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**Sand's Point Preserve Bridge Improvements BIN 226I24-0**

**NYSDOT INTERIM # NC0012**

**NASSAU COUNTY, NEW YORK**

**Contract: H63035-01G**

**GENERAL CONSTRUCTION PAYMENT ITEMS AND ITEM SPECIFICATIONS:**

**The General Construction Payment Items and Specifications as per New York State Department of Transportation, Office of Engineering Standard Specification – Construction and Materials (English Units) as amended by the current additions and modifications thereto.**

**SPECIAL TECHNICAL ITEMS AND SPECIFICATIONS**

ITEM 304.10119917 SUBBASE COURSE, TYPE 1011-2

ITEM 555.12020018 GROUT CULVERT PIPE INSERT

ITEM 555.89SP PRECAST CONCRETE ACCENT TRIM

ITEM 560.10090008SP CLEANING HISTORIC STONE MASONRY AND CONCRETE SURFACES

ITEM 560.12010039SP HISTORIC STONE MASONRY REPOINTING

ITEM 560.40000008 REPAIR STONE MASONRY

ITEM 603.98040007 POLYVINYL CHLORIDE (PVC) SEWER PIPE AND FITTINGS,4"

ITEM 604.06000006 TRENCH DRAIN SYSTEM

ITEM 607.98010111 TEMPORARY CHAIN LINK FENCE

**ITEM 304.10119917 - SUBBASE COURSE, TYPE 1011-2**

All of the requirements of Section 304 *Subbase Course* shall apply except as herein modified:

**MATERIALS**

Material shall conform to the requirements of §733-04 *Subbase Course* with the addition of the following requirement:

**Natural Material.** Natural material obtained from sources located in Richmond, Kings, Queens, Nassau and Suffolk Counties shall conform to the following gradation:

Sieve Size Designation	Percentage Passing by Weight
2 in.	100
1 in.	80-100
¼ in.	50-85
No. 10	30-70
No. 40	15-40
No. 200	6-12

Natural material obtained from sources other than those listed above shall conform to the gradation requirements of Table 733-04A *Subbase Gradation* in §733-04B. *Gradation*.

**BASIS OF PAYMENT**

*Payment will be made under:*

Item No.	Item	Pay Unit
304.10119917	Subbase Course, Type 1011-2	Cubic Yard

**DESCRIPTION:**

The work shall consist of the in-place grouting of corrugated metal pipe within an existing culvert as shown on the plans.

The requirements of the work are such that the entire portion of the culvert cell which surrounds the pipe insert shall be completely filled with grout for the full length of the culvert.

**MATERIALS:**

Materials used for grout manufacture shall conform to the following requirements:

Portland Cement, Type 2	701-01
Flyash	711-10
Grout Sand	703-04
Water	712-01

**Grout Mix Design**

This shall be proportioned by weight in accordance with the following one (1) cubic yard mix.

Cement	625 lbs.
Flyash	1000 lbs.
Grout Sand	2500 lbs.

Slump shall be between 5.5" and 8".

The Contractor may propose an alternative mix design to the Materials Bureau for approval. Such a submission will not be cause for an extension of time as provided under Subsection 108-04.

Grouting equipment shall be capable of placing grout at all locations required by the plans. All equipment shall be approved by the Engineer at least five (5) working days prior to its intended use. A working demonstration of the pumping equipment's capability will be required as part of the approval procedure.

All grout shall be batched from an approved automated batch plant in accordance with the requirements of Subsection 501-3.02.

**CONSTRUCTION DETAILS:**

The Contractor may place grout in accordance with the scheme shown on the plans, or may submit an alternate scheme to the Regional Construction Engineer for approval. Such a submission will not be cause for an extension of time as provided under Subsection 108-04. If the Contractor's plan is not approved, the scheme shown on the plans shall be used. Grout shall be transferred from the point of mixing to the point of deposition only by approved equipment. The grout shall be pumped in such a manner that:

1. The grout does not dilute or separate.
2. The pipe insert does not move.

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3. The abutting ends of the pipe are not deformed.
4. All voids between the liner-pipe and existing culvert are completely filled.
5. The grout differential level between sides of the pipe does not exceed 12".
6. The grout pressure can be varied to effectively move the grout against a head pressure of at least 10 psi.

If it becomes necessary to change the rate of pumping, the pressure will be increased at a rate not to exceed 1 psi per minute up to the required rate.

Agitation shall be continuous and shall be continued during all shut-downs. If a shut-down equals 15 minutes, the grout shall be recirculated through the pump and delivery lines shall be flushed clean of grout with clean water.

If in the opinion of the Engineer, the grout has begun to set in the agitator, pump or lines, it shall not be placed regardless of reason.

After the grout is in place for three days, the interior surface of the pipe shall be sounded by hammering and a minimum of six (6) 2" diameter cores shall be taken at locations specified by the Engineer. The cores shall be extended to the existing pipe. If any of the six cores show inadequate grouting, the failing core holes shall be regouted and six additional 2" cores shall be taken. The grouting shall be accepted when a set of six core holes with acceptable grout filling are taken.

**METHOD OF MEASUREMENT:**

Grout filling will be measured by the number of cubic yards, based on truck delivery tickets, used to complete the work to the satisfaction of the Engineer. Deductions will be made for any waste as determined by the Engineer.

**BASIS OF PAYMENT:**

The unit price bid per cubic yard shall include the cost of furnishing all labor, materials, from work and plugging leaks, necessary to complete the work.

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## **ITEM 555.89SP – PRECAST CONCRETE ACCENT TRIM**

The following Standard Specifications shall apply:

All the provisions for §555-2 Structural Concrete shall apply except reinforcement shall be stainless steel. In addition, the materials shall include:

### Precast Colored Concrete Structure

All the provisions for §704-03 Precast Concrete shall apply.

The following sections of the ASTM standard specifications shall apply:

Type 316 Stainless Steel Bar Reinforcement, ASTM A955/A955M Standard Specification for Deformed and Plain Stainless Steel Bars

Type 316 Stainless Steel /Anchors ASTM A240/A580/Ties ASTM A240/A580

Colored Concrete: All coloring agents shall produce a color to match existing trim as indicated on the Contract Documents.

Color admixtures for integrally colored concrete will be certified by the manufacturer as meeting the requirements of ASTM C979 Standard Specifications for Pigments for Integrally Colored Concrete and be packaged such that one dose is the proper dosage for one cubic yard of concrete.

## **CONSTRUCTION DETAILS**

All the provisions for §555-2 Structural Concrete shall apply with the following modifications:

### Colored Concrete

Apply color admixtures at the manufacturers recommended dosage rate.

This rate is to remain constant for all batches of concrete produced. Prior to placing concrete, protect adjacent surfaces and structures from spatters. Once a portion of the batch has been placed, no additional water shall be added to the remaining batch.

To integrally color the concrete, introduce the color additive into the mixer drum in a manner recommended by the manufacturer. The quantity of concrete being delivered shall be no less than one-third the capacity of the mixer drum. Batch the concrete in full cubic yard increments.

Within 24 hours, remove release agent with pressure wash and apply a pre-approved sealer, recommended by the coloring manufacturer, at a rate consistent with manufacturer's specifications.

Surface Preparation: The Precast accent trim shall be installed on a clean sound surface as depicted in the details.

Installation: Install precast units in their designed positions and in accordance with the approved setting drawings. Adjust units true to line, with uniform joint width. Anchor precast units securely to supporting construction.

After completion of installation and other activities liable to soil the precast units, clean exposed surfaces of the units with soap powder in clean water applied by scrubbing with stiff fiber brushes. If recommended by the precast unit manufacturer, a cleaning solution which will not be harmful to the units or the joints may be used in lieu of soap and water.

Immediately after cleaning, thoroughly rinse units with clean water.

### **SUBMITTALS:**

**Shop Drawings:** Submit fully dimensioned fabrication and setting drawings. Include details of clearances, arrangements, piece markings, reinforcing, weld plates and welding, inserts, anchors, connections, accessories, joints, openings, and other requirements. When shop drawings are "Approved as Noted", promptly resubmit copies of corrected drawings for formal approval and record.

**Samples:** The Contractor shall be required to submit, for approval, color samples and product data for color admixture, approved setting drawings. A sample of each precast concrete element shall be submitted to the owner's representative for approval. Once the samples have been approved in writing, a field mockup shall be installed

**In-Site Mockups:** A full size field sample of each type and color of precast unit, one for the corbel trim, one for an interior cross and one for a planter cross shall be installed at the designated location required for work. Facing materials and finish shall match the approved samples, and all other materials and methods used for the mockups shall be proposed for units provided for the work. The full size samples shall be subject to approval by the NCDPW Representative and, when approved shall be left in place. The approved mockups will be used to establish the standard of quality and performance by which similar work will be judged.

### **METHOD OF MEASUREMENT**

This work will be measured as the number of cubic yards of precast concrete accent trim installed.

The unit price bid per cubic yard shall cover the cost of all labor, material and incidentals necessary to complete the work including the Stainless-steel fasteners and reinforcement

**ITEM 560.10090008SP - CLEANING HISTORIC STONE MASONRY AND CONCRETE SURFACES**

**DESCRIPTION**

This work shall consist of cleaning historic stone masonry and concrete surfaces of graffiti, efflorescence, mineral staining, rust, and any organic material, in accordance with the contract documents and as directed by the Engineer.

**MATERIALS**

The material used for cleaning shall be a low-pressure water rinse. A non-ionic, non-phosphorus, biodegradable, neutral pH detergent to be approved by the Engineer-In-Charge may also be used. Detergents shall be used in accordance with the manufacturer's recommendations or as directed by the Engineer.

**CONSTRUCTION DETAILS**

All stone masonry and concrete surfaces shall be cleaned from bottom to top, to ensure that clean surfaces are continually rinsed throughout the cleaning process, with a 500 psi water rinse and natural or synthetic bristle brushes. Metallic brushes, scrapers or wire wheels will be allowed only to clean areas of efflorescence with special care taken to not damage concrete surfaces. If 500 psi is not effective in certain locations, water pressure up to, but not exceeding, 1000 psi may be utilized at the approval of the Engineer. High-pressure cleaning will not be allowed. If the cleaning operations result in damage to the existing concrete that is to remain in place, cleaning operations shall stop immediately, and the Engineer shall be contacted. All cleaning equipment shall be approved by the Engineer prior to use. Cleaning should not occur if there is a likelihood of frost or freezing temperatures.

Cleaned surfaces shall exhibit no evidence of organic material or dirt. All debris (not including water runoff) developed as a result of the cleaning process shall be collected and disposed of in a manner directed by the engineer. If, after cleaning is completed, the cleaned surface becomes dirty as a result of the contractor's operations, it shall be re-cleaned by the foregoing procedures at the expense of the contractor. Any concrete surfaces damaged during the cleaning process shall be repaired by the contractor in a manner satisfactory to the Engineer at no expense to the State.

**METHOD OF MEASUREMENT**

This work will be measured as the number of square feet of historic stone masonry and concrete surfaces cleaned satisfactorily.

**BASIS OF PAYMENT**

The unit price bid for Cleaning Historic Stone Masonry and Concrete Surfaces shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work including the cost of collecting, removing and disposing of debris.

**DESCRIPTION**

The work shall consist of raking and repointing masonry joints as indicated in the contract documents and as directed by the Engineer.

This payment item shall also include mortar material testing.

Contractors or Subcontractors performing this work shall be required to provide documentation proving qualified experience. This work shall be performed by a skilled mason. Work shall be supervised by a lead mason with a minimum of 5 years' experience.

**MATERIALS**

The following sections of the standard specifications shall apply:

Quilted Covers (for Curing)	711-02
Polyethylene Curing Cover (White Opaque)	711-04
Water	712-01

The following ASTM specifications shall apply:

Standard Specification for Natural Cement	C10
Standard Specification for Aggregate for Masonry Mortar	C144
Standard Specification for Hydrated Lime for Masonry Purposes	C207
Standard Specification for Pigments for Integrally Colored Concrete	C979

**MORTAR:**

Provide mortar matching the strength, color, texture, and composition of the original historic mortar. Only pre-proportioned, dry-blended mixes packaged under factory-controlled conditions and requiring the addition of only water on-site shall be used. All ingredients are to be batched within plus or minus 1% accuracy, except pigments which shall be weighted to a precision of 0.02%.

**Mortar Materials:**

Natural Cement: Natural cement or quick-setting natural cement processed from argillaceous limestone and meeting the requirements of ASTM C10. Artificial mixtures of other cementitious

materials, fly ash, slag, Portland cement, hydraulic lime, or lime-pozzolan mixtures are not permitted as substitutes for natural cement.

Hydrated Lime: ASTM C207, Type S, incorporated as a finely divided powder in uniform particle size, free of lumps, flakes or other inconsistencies.

Aggregate: Natural sand blend, rounded to sub-angular in shape, washed, screened and dried, meeting the requirements of ASTM C144. Aggregate to be selected to match that of the original mortar aggregates while remaining in compliance with ASTM C144 grading and soundness requirements. Match size, color, texture, and gradation of historic mortar sand as closely as possible.

Water: Water shall meet the requirements of §712-01, and be potable, free of deleterious quantities of material which may affect mortar performance or appearance.

Admixtures: No other admixtures shall be used without the express written consent of the Engineer and the mortar manufacturer. Calcium chloride shall not be permitted.

Pigment: Provide colored/pigmented mortar matching the color of the existing bluestone for use in bluestone pointing. Mortar for use in granite and gneiss masonry pointing shall not be pigmented.

Pigment shall not exceed 10% the weight of the cement component in mortar mix and shall be non-fading, UV-stable, and comply with the requirements of ASTM C979.

Acceptable manufacturers of custom pre-packaged natural cement mortars include:

Restore Pre-Mixed Mortar  
as manufactured by  
Freedom Cement, LLC  
24 East Brookfield Road  
North Brookfield, MA 01535  
(508)867-6100; (866)254-7277  
www.freedomcement.com

Rosendale No. 12 M  
as manufactured by  
Edison Coatings, Inc.  
3 Northwest Drive  
Plainville, CT 06062  
(860)747-2220; (800)341-6621  
www.rosendalecement.net

or equal as approved by the Engineer

**Mortar Testing:**

Mortar testing shall be completed to determine the appropriate mortar mix proportions and aggregate in accordance with ASTM C1324 Standard Test Method for the Examination and Analysis of Hardened Masonry Mortar. Samples of original pointing and setting mortar shall be removed by the Contractor from approved locations. Mortar testing shall be completed by a qualified petrographer as defined by ASTM C1324 with previous experience in the analysis of

natural cement mortars. The specified mix shall conform to the materials and proportioning sections of ASTM C1713 Standard Specification for Mortars for the Repair of Historic Masonry (modified). Acceptable petrographers include:

John Walsh  
Highbridge Materials  
Consulting  
404 Irvington St.

Pleasantville, NY 10570  
(914) 502-0100  
www.highbridgемaterials.com/  
info@highbridgемaterials.com

Dipayan Jana, PhD  
Construction Materials  
Consultants  
4727 Route 30, Suite 104  
Berkshire Center  
Greensburg, PA 15601  
(724) 834-3551  
www.cmc-concrete.com  
info@cmc-concrete.com

Ronald Sturm  
Concrete Consulting Group

11001 Hampshire Avenue S

Minneapolis, MN 55438  
(612) 280-6505 (mobile)  
www.braunintertec.com  
rsturm@braunintertec.com

or equal as approved by the Engineer

**QUALITY ASSURANCE:**

Obtain materials for masonry restoration from a single source for each type of material required to ensure a match in quality, color, texture, and pattern. Materials shall be used only at the manufacturer's recommended temperature tolerances

**CONSTRUCTION DETAILS**

**PRE-WORK COORDINATION:**

Masonry Cleaning: The work of Historic Stone Masonry Cleaning shall be completed prior to the work of this section being performed. Historic Stone Masonry Cleaning shall be paid under a separate payment item.

Preconstruction Conference: Prior to beginning the work, the Contractor shall convene a meeting with all relevant parties, including subcontractors, to review the requirements of the Program of Work, installation procedures, locations of required mock-up areas, and all job conditions and processes.

**TOOLS:**

Power Tools: Use of rotary grinders, power chisels, pneumatic hammers, or any other power tools will be permitted only with prior approval of tool types, locations and mechanics. If mechanical grinders are approved for cutting the horizontal joints the blade must be no larger than four (4) inches in diameter. Power chisels, if used, shall be hand-held short stroke pneumatic carving tool with a round shank chisel blade with no retainer to. Power routers shall not be used.

Chisels: Chisels shall be narrower than the joints in which they are used.

Brushes: Brushes shall be stiff, natural or synthetic -bristle brushes. Metallic brushes shall not be used.

**JOB CONDITIONS:**

Cold-Weather Requirements: Pointing work shall only be performed if the temperature remains above 40° Fahrenheit. If in any given 24-hour period the temperature drops or is expected to drop below 40° Fahrenheit at any time, pointing work must stop. The Contractor shall not recommence work until a constant temperature of 40° Fahrenheit or higher is projected for a minimum period of 72 hours. Once stopped for reason of temperature, the Contractor shall receive approval prior to recommencing work.

Hot-Weather Requirements: The Contractor shall:

- provide artificial shade and wind breaks and use cooled materials as required to minimize evaporation.
- not apply mortar to substrates with temperatures of 90°F and above unless otherwise indicated.

- protect pointing during hot, dry weather from premature drying or rapid curing using dampened fabric coverings per §711-02 or similar, approved material and/or controlled misting with water as required to keep mortar moist for 72 hours following final tooling.

Protection from Rain: The Contractor shall protect all newly pointing masonry with heavy waterproof sheeting, per §711-04 or similar approved material, from any direct attack by rain or other precipitation for at least 72 hours after mortar has been applied.

Manufacturer Limits: For manufactured repair materials, the Contractor shall perform work within the environmental limits set by each manufacturer.

#### **PRE-WORK SITE INSPECTION:**

The Contractor shall examine substrates, supports and conditions under which this work is to be performed and notify the Engineer, in writing, of conditions detrimental to the proper completion of the work. The Contractor shall not proceed with work until unsatisfactory conditions are corrected. Beginning work signifies the Contractor's acceptance of substrates and conditions. The Contractor shall review the amount and extent of work to be accomplished and review area with Engineer prior to the execution of the work.

#### **MORTAR REMOVAL:**

The Contractor shall follow the following when removing existing mortar:

- Joint profiles and widths shall be carefully documented prior to raking joints.
- Mortar shall be raked out from joints to depths equal to 2-½ times their widths, or to sound mortar, whichever is deeper. The Contractor shall remove mortar to provide reveals with square backs and to expose masonry for direct contact with pointing mortars. Joints shall be brushed, vacuumed or flushed to remove all dirt and loose debris.
- Power-operated saws and grinders will be permitted for use on the joints, with the approval, only if the Contractor can demonstrate the ability of the operators to use tools without damaging the masonry. If damage to the masonry is caused using power tools, only chisels and mallets will be permitted for the remainder of the project.
- Center-cut joints: If power operated tools are permitted, these tools shall only be used to cut a single kerf in the center of the masonry joints. Hand tools shall be used to remove the remaining mortar from sides of the joints.
- The diameter of the chisels shall be narrower than the original joint width.
- Edges of masonry units shall not be broken or marred and joints shall not be widened. The Contractor shall replace, in-kind, all masonry units damaged by mortar removal.

#### **MORTAR MIXING:**

The Contractor shall thoroughly mix mortar in quantities needed for immediate use, using mechanical batch type mixer. Dry mix all solid materials and ensure pigment component, where used, is well distributed. Add approximately half the required water and mix mortar for a

minimum of five (5) minutes, and then slowly add water as needed to reach the desired working consistency. Do not exceed mix time of ten (10) minutes.

The Contractor shall add only clean, potable water at the project site. Do not add sand, stone, cement, lime, bonding agents, color admixtures, set accelerators, plasticizers, air entraining admixtures or other materials unless specifically authorized in writing from the manufacturer.

Mortar shall be used within ½-hour of mixing, after which unused mortar is to be discarded. Do not re-temper mortars which have begun to set.

Mortar shall be stored off the ground and in accordance with manufacturer's instructions to prevent contamination by foreign materials. Packaged materials shall be maintained in a clean, dry state protected against weather, traffic, and foreign materials.

Prepackaged dry-blended mortar mix shall be delivered to the project site in clearly labeled plastic-lined bags each bearing the name and address of the manufacturer, production codes, or batch numbers, and color or formula numbers. Materials shall be delivered to site in manufacturer's original and unopened containers and packaging.

**POINTING:**

Masonry surfaces shall be pre-dampened to receive repointing mortar for a minimum of twenty (20) minutes prior to mortar placement. Masonry surfaces shall be damp but free of excess standing water at time of mortar placement.

Mortar joints shall be filled completely, compacting it into the rear and corners of the joint. The mortars shall be built-up to the full depth of the joint without interruption.

Filled joints shall be immediately tooled to match the original profile.

Excess mortar and smears shall be remove using a stiff natural bristle brush and clean water before the mortar has set.

Tooled joints shall be wet-cured as required by lightly misting with clean water periodically for a minimum of three (3) days following installation. Misting shall be performed every hour or two on the first day, as required to maintain the mortar in a damp condition, and this may be reduced to every three or four hours on subsequent days.

**CLEANING:**

Mortar shall be allowed to fully cure for a minimum of twenty-eight (28) days before final cleaning. Longer cure times are required in cooler weather. Only low-pressure water rinsing, and stiff plastic or natural bristle brushes shall be used to avoid damaging newly repointed joints. Only cleaning materials approved by the mortar manufacturer shall be used, and only at the approved rates of dilution and dwell time. The use of metal scrapers or brushes will not be

permitted. The use of acidic masonry cleaners will not be permitted.

**QUALITY ASSURANCE:**

Quality Control Program: The Contractor shall develop a written quality control program of work including method of protection of surrounding materials on the structures and site during operations, as well as proposed methods and procedures for protection of personnel, the public and adjacent structures. If mechanical grinders are to be used to cut the joints, the Contractor shall include in the quality control program provisions for supervising performance and preventing damage due to worker fatigue. If masonry damage is caused by power tools, only chisels and mallets shall be permitted for the remainder of the project.

Continuous Work: Work shall be performed daily without interruption unless directed otherwise.

Access: The Contractor shall provide regular access to the project scaffolding, swing stage, or work site so that work being performed can be inspected.

Protection: The Contractor shall protect all adjacent surfaces from mortar and adhesive drippings or other damage. Immediately remove misplaced mortar or adhesive.

**SUBMITTALS:**

Material: The Contractor shall submit cured mortar samples for initial color selection and approval.

Product Literature: The Contractor shall submit copies of the manufacturer's technical data for each product including their recommendations for installation. Include test reports and certificates that verify the products' compliance with the specification's requirements.

Samples: The Contractor shall submit three (3) sets of mortar samples for each type of pointing mortar required in the form of sample strips measuring approximately 6 inches long by ½ inch wide, set in aluminum or plastic channels. The submission shall include precise measurements of ingredients, proportions, gradations, and sources of colored sands from which each Sample was made. In addition, the Contractor shall include a sample (minimum 1.75 ounces (50 grams)) of each aggregate to be used in each pointing mortar.

In- Place Mockups: Prior to executing work, the Contractor shall provide in-place mockups for approval. A location shall be chosen which the contractor shall develop a 10ft x 10 ft in place mockup, where the stones shall be repointed according to this specification. The client may progress the final work effort after approval of repointing this initial in place mockup area and approval by the engineer. Upon approval, the approved mock-ups shall be retained, for the duration of the construction to serve as the standard of acceptable work throughout the job. Mockups may be incorporated into the finished work when so approved. The Contractor shall provide protection for adjacent surfaces during the mock-up phase.

No mockups shall be made until the methods and locations are approved. The Engineer or Engineer's representative will be present during the creation of all mockups. The Contractor shall notify the Engineer not less than seven (7) days in advance of masonry restoration mockup and shall not proceed with the work unless the Engineer or their representatives are present.

**METHOD OF MEASUREMENT**

This work will be measured as the number of linear feet, measured along the plane of the exposed surfaces of the stone masonry, of masonry joints repointed.

No measurement will be made for rejected repointing demonstration areas.

**BASIS OF PAYMENT**

The unit price bid per linear foot of masonry joint raked and repointed shall include the cost of furnishing all labor, materials, testing and equipment necessary to satisfactorily complete the work.

## **ITEM 560.4000008- REPAIR STONE MASONRY**

### **DESCRIPTION:**

The work consists of replacing missing stones and removing, cleaning and reinstalling loose stones on walls at existing structures where indicated on the contract plans.

### **MATERIALS:**

Contractor may utilize existing stones that were previously a part of the wall and are presently on the side slopes adjacent to the structure.

Contractor shall furnish all new stones required to complete the work. New stone shall match the existing as nearly as possible in kind, texture, hardness, color and finish.

Mortar shall conform to the requirements of 560-2.06. Color of mortar shall match existing, as nearly as practicable.

### **CONSTRUCTION DETAILS:**

Prior to any repairs, existing stones shall be thoroughly cleaned of all dirt and mortar.

Stone masonry shall not be installed when the ambient temperature is 40E F or below, or when the stone masonry units exhibit frost.

Stone masonry units shall not be dropped upon or slid over existing masonry, nor shall hammering or turning of stone masonry units on the masonry be allowed. Stone masonry units shall be carefully set without jarring masonry already laid, and they shall be handled in a manner so as not to cause damage.

Each stone shall be cleaned before being set and the bed which is to receive the masonry shall also be cleaned. Do not moisten surfaces receiving masonry mortar as excess water in masonry mortar is meant to be absorbed into dry receiving surfaces to obtain better bond.

All stone shall be well bedded in mortar and settled in place with a suitable wooden maul before the setting of the mortar.

No pinning up of stones with spalls will be permitted, and no spalls will be permitted in beds.

End of stones shall be buttered to completely fill the joint with mortar. Joints shall not be filled by pouring in a thin or liquid mortar. Tool joints in exposed faces to match existing.

### **METHOD OF MEASUREMENT:**

This work will be measured as the number of square feet of stone masonry repaired (including mortar joints within the stone masonry) as measured on the plane of all exposed surface (including the top, inside, outside and end faces) of the stone masonry repaired.

### **BASIS OF PAYMENT:**

The unit price bid per square foot shall cover the cost of all labor, material, equipment and incidentals necessary to complete the work.

**DESCRIPTION:**

Under this item the Contractor shall furnish, install and test (PVC) Sewer Pipe and fittings of the size and at the locations shown on the plans or as ordered by the Engineer.

**MATERIALS:**

The Contractor shall be responsible for all material furnished under this item and shall replace at his expense all material found defective in manufacture or damaged in handling. Materials shall be as follows:

**POLYVINYL CHLORIDE (PVC) SEWER PIPE**

All Polyvinyl Chloride (PVC) pipe and fittings shall meet or exceed all of the requirements of ASTM specification D3034, "Type PSM Polyvinyl Chloride (PVC) Sewer Pipe and Fittings," 4 NPS through 15 NPS, Class SDR-35 and ASTM F679 "(Polyvinyl Chloride) (PVC) Large Diameter Plastic Gravity Sewer Pipe and Fittings" for 18 NPS through 36 NPS. The minimum modulus of elasticity shall be 19 lbs/sq. ft. All pipes shall be suitable for use as a gravity sewer conduit. Provisions must be made for contraction and expansion at each joint with a rubber ring. The bell shall consist of an integral wall section which securely locks the solid cross-section rubber ring into position. The gasket shall meet the requirements of ASTM F477-76.

Fittings - All fittings and accessories shall be as manufactured and furnished by the pipe supplier, and have bell and/or spigot configurations identical to that of the pipe to which they are connected. Service connections shall be of the "tee-wye" combination. The PVC pipe shall be cut to the correct length in the field as necessary to allow installation of new service connections or service connections to existing laterals.

Saddles - Where it is impractical to install a PVC "tee-wye" service connection, a saddle may be used to make a service connection for new lateral.

The saddle shall contain a rubber (O) - ring gasket cemented in place in accordance with ASTM D1869 specifications. The saddle shall have a spigot or bell inlet suitable for acceptance of the kind and size of lateral pipe to be connected. If necessary, a flexible coupling or gasket may be used to connect the lateral to this saddle. The saddle shall be installed in accordance with the manufacturer's specifications and shall meet any requirements established by the owners of the sewer system.

## CONSTRUCTION DETAILS:

- A) EXCAVATION - Excavation shall conform to the requirements of Item 206.02 - Trench and Culvert Excavation or Item 206.04 - Trench and Culvert Excavation - O.G., except as modified herein and the limits are shown in the Contract Plans.
- B) BACKFILLING - No trench, pit or other excavation shall be backfilled until the pipe or appurtenant structures contained therein shall have been completely installed and inspected and approved by the Engineer. In backfilling around and over pipes, stone bedding material shall be spread in layers not over 6 inches in depth on both sides of the pipe and thoroughly spaded and tamped around the pipe so that no displacement of the pipe results. Backfill for a minimum distance of 2 ft above the top of the pipe shall be of the same material and shall be spread in layers not to exceed 6 inches in thickness or depth and each layer shall be thoroughly compacted by spading and tamping before further refilling is done. In all cases, the backfill above the top of the pipe shall be placed to a minimum of 18 inches before compaction is begun directly over the pipe.
- C) DISPOSAL OF WATER - Except when included in another specification (i.e. work area located in a hazardous or contaminated area), water in excavated trenches or pits shall be removed by pumping, bailing or other satisfactory method before the installation of any pipe or structure. Water so removed shall be conveyed to such places and points that it will not interfere with the progress of the work or be a hazard or damage to public or private property. No water containing mud, grit or substances that would settle and be detrimental to the operation of sanitary sewers shall be permitted to flow into any storm or sanitary sewer or drain. No sewage entering excavated trenches or pits shall be pumped or dumped into any surface drainage course. No water, sewage or other material shall be allowed to enter any water main.
- D) LAYING SEWER PIPE - Excavation of trenches for sewer pipe shall be made to the line and grade established or as directed by the Engineer and shall be made straight and true with no deviations from a straight line or grade between manholes.

The sewer pipe shall be bedded on a minimum of 6 inches of stone bedding material.

The trench bottom shall be flat. Holes for bells or couplings shall be dug so that no portion of the bell or coupling will contribute to the support of the pipe. The barrel of the pipe shall be uniformly supported throughout the entire length. Should over digging occur, all loosened material shall be removed and the trench bottom brought back to grade with stone bedding material. Bedding material shall be according to specifications and shall be placed and tamped in a manner satisfactory to the

Engineer. Bedding material in such instances shall be placed at the sole expense of the Contractor.

In areas of rock excavation the pipe shall be bedded on a minimum of 6 inches bedding material.

In areas where unstable trench bottoms are encountered, the trench shall be excavated to an additional depth below the layer of stone bedding material and a layer of stone foundation material placed and graded so as to properly support the bedding material, pipe, and backfill. The depth shall vary according to the actual conditions. Payment for such foundation material shall be as hereinafter specified.

All preformed joints shall be made according to manufacturer's specifications. Where it may be necessary to connect to existing facilities of like or unlike materials, such connection shall be made by use of special manufactured adapters as approved by the Engineer.

The inside of each pipe shall be inspected and all foreign matter, joint material that squeezed through, etc., shall be removed before backfilling. Care shall be taken in placing backfill so that the joints are not loosened or sprung. The backfill shall be packed and tamped into place under the pipe. All loosened or broken joints shall be removed and replaced.

- E) LEAKAGE TESTS - Unless otherwise ordered by the Engineer, all sewers, service connections and sewer laterals, shall be tested for leakage and shall satisfactorily meet the test requirements. No connections to existing sewer laterals shall be made until the leakage requirements are met. The Contractor shall furnish all labor, materials and equipment and shall perform the tests. The Contractor shall make all necessary repairs or replacements and shall repeat the final leakage test(s), until the minimum leakage requirements are met.

Leakage tests shall be made only after backfilling is completed. Two types of tests will be acceptable: (a) Exfiltration Test or (b) Low Pressure Air Test. The type of test used will depend upon the extent and type of installation and shall be as directed by the Engineer.

(a) Exfiltration Test

This leakage test consists of an exfiltration test wherein the main sewer, sewer laterals and manholes are filled with clear water to provide a head of at least 5 ft above the top of the pipe or 5 ft above the level of the groundwater table, whichever is higher, at the highest point of the sewer line under test, and measuring the loss of water from the line by the amount which must be added to maintain the original level. In this test the

line must remain filled with water for at least 24 hours prior to taking measurements, and the actual test period shall not be less than two (2) hours.

For purposes of determining the elevation of the top of the groundwater table, the Contractor shall furnish and install an open-end standpipe of perforated pipe. The standpipe shall be installed at least 24 hours before the line is filled with water. One (1) standpipe shall be installed for each section of sewer line tested. A section of sewer is defined as the length of main sewer, including sewer laterals, between two consecutive manholes. Following successful completion of the leakage tests, the standpipe shall be filled with approved material and the top cut off at least 2 ft below finished grade.

Exfiltration shall be measured by the drop of water level in a standpipe or in one of the sewer manholes. When a standpipe and plug arrangement is used in the upper manhole of a line under test, there must be some positive method of releasing entrapped air in the sewer prior to taking measurements. In the case of sewers laid on steep grades, the length of line to be tested at any one time may be limited by the maximum allowable internal pressure on the pipe and joints at the lower end of the line. The recommendations of the pipe manufacturer shall be followed.

When the level of the groundwater table is of such height that the manholes cannot be used for convenient measuring, or if the vertical distance between the top of the pipe and the manhole rim is less than 5 ft, the Contractor shall test the pipe separately from the manholes utilizing the standpipe method including plugs, hoses, etc., to establish the required head of water. Manholes shall then be tested separately.

The total leakage of any section tested shall not exceed the rate of 30 gallons per mile of pipe per 24 hours per 1 inch of nominal pipe diameter. For purposes of determining the maximum allowable leakage, manholes shall be considered as sections of 4 ft or 5 ft diameter pipe, depending on the type manhole included in the test. The equivalent leakage allowance shall be 5 gallons per manhole per 24 hours for 4 ft diameter manholes, and 6 gallons per manhole per 24 hours for 5 ft diameter manholes.

(b) Low Pressure Air Test

This leakage test consists of plugging each section of sewer, pressurizing the line with air, and measuring the pressure drop time relationship.

Each end of the section of line to be tested shall be sealed off with inflatable pneumatic or manual plugs which shall hold against the air pressure without external bracing and without movement. Plugs shall have at least two valved connections opening into the pipe section, one for introducing low pressure air and one for

connecting an approved air gauge calibrated in .25 psi increments.

Air shall be introduced into the test section to a pressure of 4 psi above the average pressure of any ground water that may be over the pipe. In such ground water areas, the Contractor shall install during the original installation a ½ inch capped pipe nipple through the manhole wall at a level of the top of the lowest pipe. The ground water level shall be determined by clearing the nipple with air and connecting a clear plastic hose to the same and measuring the water level in the hose. The height of the water level in feet above the pipe invert divided by 2.3 shall establish the pounds pressure to be added to all readings.

A minimum of two minutes shall be allowed for the pressure to stabilize during which time the pressure shall not drop more than 0.5 psi. The air supply shall then be disconnected and the time in minutes shall be recorded for the pressure to drop no more than 1 psi. Such time shall not be less than the following:

<u>NOMINAL SIZE</u>	<u>MINUTES</u>
4 NPS	2.0
6 NPS	3.0
8 NPS	4.0
10 NPS	5.0
12 NPS	5.5
15 NPS	7.5
18 NPS	8.5
21 NPS	10.0
24 NPS	11.5
27 NPS	13.0
30 NPS	14.5
33 NPS	16.0
36 NPS	17.5

**METHOD OF MEASUREMENT:**

The quantity to be paid for under these items will be the number of feet of new sewer pipe (including all necessary connections and fittings) furnished and installed in accordance with the plans, specifications and as ordered by the Engineer.

**BASIS OF PAYMENT:**

The unit prices bid per yard for these items shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work including fittings, plugs, connections, and leakage tests.

Excavation, sheeting, and backfill material will be paid for separately under their respective items. Payment will be made under:

ITEM NO.	DESCRIPTION	UNIT OF	PAYMENT
603.98040007	PVC Sewer Pipe & Fittings	4 NPS	Feet
603.98060007	"	6 NPS	Feet
603.98080007	"	8 NPS	Feet
603.98100007	"	10 NPS	Feet
603.98120007	"	12 NPS	Feet
603.98150007	"	15 NPS	Feet
603.98180007	"	18 NPS	Feet
603.98210007	"	21 NPS	Feet
603.98240007	"	24 NPS	Feet
603.98270007	"	27 NPS	Feet
603.98300007	"	30 NPS	Feet
603.98330007	"	33 NPS	Feet
603.98360007	"	36 NPS	Feet

"Progress payments will be made at the unit price bid for 80 percent of the quantity of pipe installed. The remaining 20 percent will be paid for when the testing of the system has been completed."

## **ITEM 604.06000006 - TRENCH DRAIN SYSTEM**

### **DESCRIPTION**

This work shall consist of furnishing and installing a trench drain system and accessories in accordance with the contract documents and as directed by the Engineer.

### **MATERIALS**

Manufacturer:

ABT, Inc PO Box 837  
259 Murdock Rd  
Troutman, NC 28166  
800-438-6057  
[www.abtdrains.com](http://www.abtdrains.com)

ACO Polymer Products 12080 Ravenna Rd Chardon, OH  
800-543-4764  
[www.acousa.com](http://www.acousa.com)

Zurn Industries, Inc. 2855 Girls Rd  
Jamestown, NY 14701  
716-665-1135  
[www.zurn.com](http://www.zurn.com)

Or equal as approved by Engineer.

Trench drain units shall be interlocking channels and includes an attached grate meeting the requirements of §655, Frames, Grates, and Covers.

Channel units shall be able to accept connections to 4" or 6" underdrain pipe on the ends, bottom, and/or sides.

The trench drain system shall meet a design load of HS 20 and the grate shall be ADA compliant.

### **CONSTRUCTION DETAILS**

Excavation shall be in conformance with the Construction Details of §206-3 Trench, Culvert, and Structure Excavation.

Install trench drain system with manufacturer's instructions. Drainage units shall be laid in close conformity to line and grade and have a full, firm and even bearing at each joint and along their entire length.

Backfill shall comply with §206-3.02, Structure Excavation.

### **METHOD OF MEASUREMENT**

This work will be measured as the number of linear feet of Trench Drain System satisfactorily furnished and installed.

### **BASIS OF PAYMENT**

The unit price bid shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work. Excavation and backfill will be paid for under the items shown in the contract documents.

**DESCRIPTION**

This work shall consist of furnishing, erecting, moving and removing chain link fencing and metal gates of the size and type as shown on the contract document and as directed by the Engineer.

The types of the fences to be used may be one of the following:

- Galvanized Steel Chain-Link Fencing on Steel Frame
- Vinyl Coated Steel Chain-Link Fencing on Steel Frame
- Vinyl Coated Steel Chain-Link Fencing on Plastic Coated Frame Fence Gates

Temporary chain link fences shall be installed on top of temporary concrete barriers and in sidewalk and roadway areas. Refer to the contract documents for location and installation method.

**MATERIALS**

Materials shall conform to the requirements specified in the following subsections of Section 700-Materials:

Fences 607-2

Fences:

Fences shall be as specified in §710-02, §710-03, §710-10, and §710-12.

Fence Gates:

Gate frames shall be composed of tubing braced with rods, bars or angles and filled with wire mesh, meeting the specification requirements for the type of fencing with which the gate is to be used, all as detailed on the contract documents or Standard Sheets.

Portland Cement Concrete for Basis:

Portland cement concrete used for basis shall be Class A or C, conforming to the requirements of §501-2, except that requirements for automated batching shall not apply.

**CONSTRUCTION DETAILS**

The following sections of the standard specifications shall apply:

Fences 607-3

**General**

Concrete Barrier: The Contractor shall install fence posts on the concrete barrier in 1 ½ inch diameter, 12 inch deep drilled or formed holes near each end of each section of barrier. In addition, if the concrete barrier is furnished in lengths exceeding 10 feet, it will be necessary for the Contractor to provide an additional hole at the center of the section to permit the installation of an intermediate post.

On Grade: Line posts and corner and end posts on grade shall be installed in accordance with Standard Sheet 607-04 and 607-05 and gate posts shall be installed in accordance with Standard Sheet 607-06.

**METHOD OF MEASUREMENT**

This work will be measured as the number of linear feet - as measured along the top of fencing, including gates, center to center of end posts - of the chain-link fencing installed.

**BASIS OF PAYMENT**

The unit price bid per linear feet of temporary chain-link fencing furnished and installed shall include the cost of all labor, materials, tools and equipment necessary to satisfactorily complete the work.

Upon completion of construction, all materials installed under this item shall become the property of the Contractor and shall be removed by the Contractor from the site of work.

Progress Payment: Progress payments will be made at the unit price bid for for ninety (90) percent of the quantity of chain-link fencing and gates installed. The remaining ten (10) percent will be paid upon removal.

**NO TEXT ON THIS PAGE**

**CHAPTER 12, APPENDIX 12-1**

**CONSTRUCTION CONTRACT**  
**REQUIREMENTS**

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**CONTENTS**

**Appendix 12-1**

**Page**

<b>CONTRACT REQUIREMENTS FOR <u>ALL</u> LOCALLY ADMINISTERED FEDERAL AID CONSTRUCTION PROJECTS CHECKLIST.</b>	<b>12-1.3</b>
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If Sponsors use NYSDOT Standard Specifications for their construction projects, include the following Federal requirements in ALL contract bid proposals:

- Certification for Federal Aid Contracts.**
- Disclosure of Lobbying Activities.**
- Non-Collusive Bidding Certification**, this format provides a single signature page for the bidder to sign with all requirements listed.
- U.S. Department of Transportation Hotline Information.**
- Equal Employment Opportunity Requirements.** See Section 102-11 of the NYSDOT Standard Specifications.
- FHWA-1273 Required Contract Provisions.**

## **CERTIFICATION FOR FEDERAL AID CONTRACTS**

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his/her bid or proposal that he/she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000.00 and that such subrecipients shall certify and disclose accordingly.

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS, AND MUST BE INCLUDED IN EACH BID PROPOSAL.**

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code for the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to

influence the Federal covered action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB Control Number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b>		<b>2. Status of Federal Action:</b>		<b>3. Report Type:</b>	
a. contract		a. bid/offer/application		a. initial filing	
b. grant		b. initial award		b. material change	
c. cooperative agreement		c. post-award		<b>For Material Change Only:</b>	
d. loan				year _____ quarter _____	
e. loan guarantee				date of last report _____	
f. loan insurance					
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>		
Congressional District, if known:			Congressional District, if known:		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>		
			CFDA Number, if applicable:		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b>		
			\$ _____		
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the flier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature:		
			Print Name:		
			Title:		
			Telephone No.:		Date:
<b>Federal Use Only:</b>				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

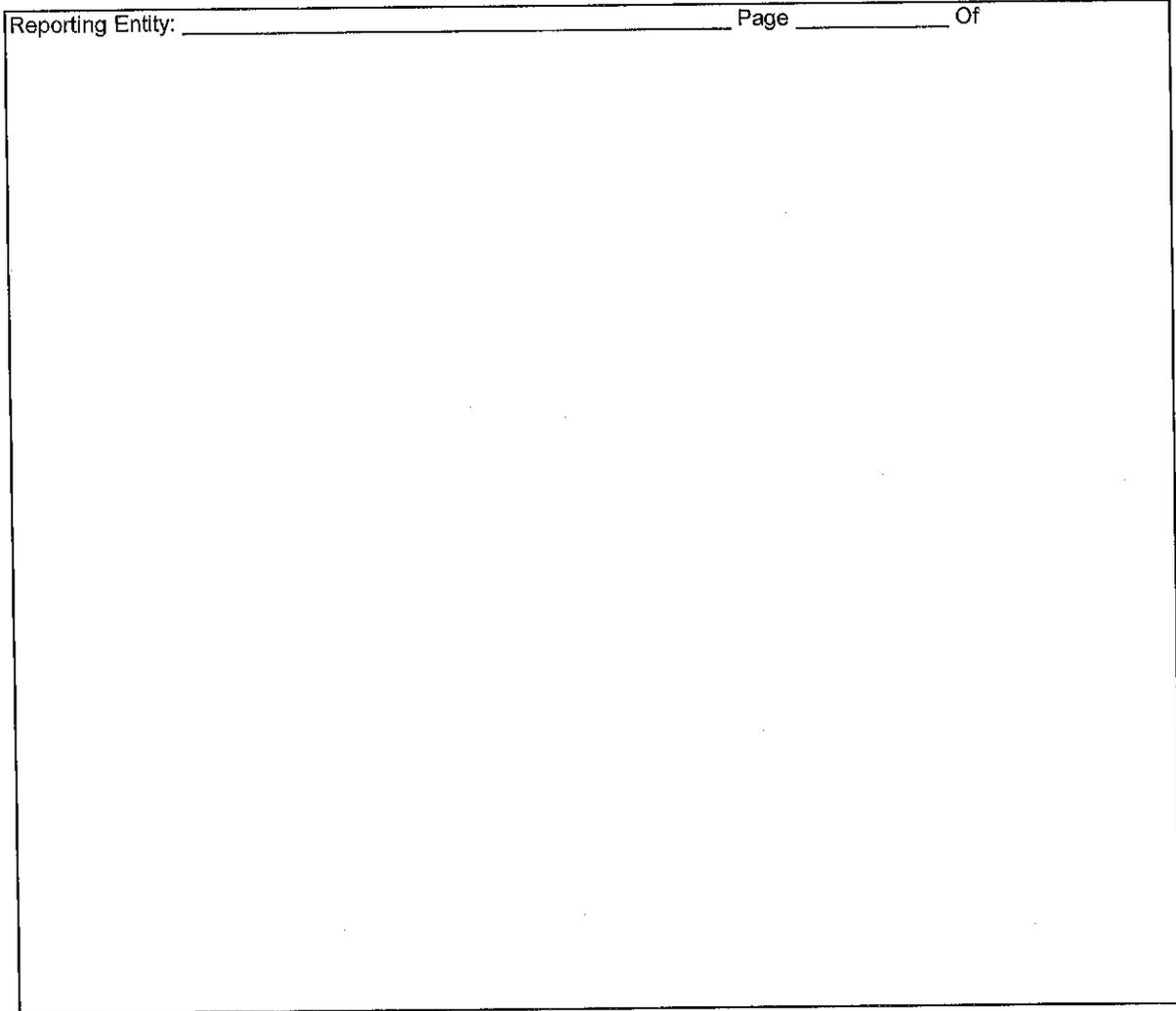
**REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by  
OMB  
0348-0046

Continuation Sheet

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ Of \_\_\_\_\_



Authorized for Local Reproduction - Standard Form LLL

**NON-COLLUSIVE BIDDING CERTIFICATIONS**

**REQUIRED BY SECTION 139-D, STATE FINANCE LAW and SECTION 103-D OF GENERAL MUNICIPAL LAW**

"Section 139-d, SFL and Section 103-d, GML, "Statement of non-collusion in bids to the state."

1. Every bid hereafter made to the state or any public department, agency, or official thereof, where competitive bidding is required by statute, rule, or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation."

**REQUIRED BY TITLE 23, U. S. CODE, AND SECTION 112. A NON-COLLUSIVE BIDDING**

**CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.**

(A) 2

"By submission of this bid, the bidder does hereby tender to the Owner this sworn statement pursuant to Section 1128 of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112 of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

**REQUIRED BY TITLE 49, CFR, VOLUME 1, SUBTITLE A, PART 29**

"The signatory to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of five percent or more ownership):

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

EXCEPTIONS: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions).

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS. HOWEVER, THE NYS COLLUSIVE BIDDING CERTIFICATION AND MANY IN USE BY LOCAL GOVERNMENTS ARE ALMOST IDENTICAL AND ARE ACCEPTABLE.**

**THE FOLLOWING PAGES ARE THE REQUIRED CERTIFICATION REGARDING NON-COLLUSIVE BIDDING PROCEDURES AND THE CONTRACTOR'S ELIGIBILITY TO SUBMIT A BID UNDER FEDERAL LAW. THE LAST PAGE IS A GENERAL BIDDER INFORMATION FORM. ALL SHOULD BE INCLUDED IN THE CONTRACT DOCUMENTS, IMMEDIATELY FOLLOWING THE PAGE(S) WHICH CONTAINS THE NON-COLLUSIVE BIDDING REQUIREMENTS. BY SIGNING ONE OF THESE CERTIFICATIONS, THE CONTRACTOR CERTIFIES THAT HE UNDERSTANDS AND AGREES TO BE BOUND BY THE PROVISIONS OF THE FOLLOWING LAWS:**

1. NEW YORK STATE FINANCE LAW, ARTICLE 9, SECTION 139-d

2. TITLE 49, CFR, PART 29

3. TITLE 23, U. S. CODE-HIGHWAYS, SECTION 112

THE CONTRACTOR SHOULD CHOOSE THE APPROPRIATE NOTARIZATION WHICH CORRESPONDS TO THE TYPE OF COMPANY (SOLE PROPRIETORSHIP, PARTNERSHIP, OR CORPORATION) THAT HE/SHE REPRESENTS OR IS AFFILIATED WITH. ALL BIDDERS SHOULD FILL OUT THE APPROPRIATE SECTION OF THE BIDDER INFORMATION SHEET.

BY EXECUTING THIS DOCUMENT, THE CONTRACTOR AGREES TO:

1. Perform all work listed in accordance with the Contract Documents at the unit prices bid; subject to the provisions of Section 104 -04, Standard Specifications, Construction and Materials, published by the New York State Department of Transportation, and dated May 4, 2006, if applicable;
2. All the terms and conditions of the non-collusive bidding certifications required by Section 139-d of the State Finance Law, and Section 112, Title 23, U.S. Code;
3. Certification of Specialty Items category selected, if contained in this proposal;
4. Certification of any other clauses required by this proposal and contained herein;
5. Certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions, or civil judgments required by 49 CFR Part 29.
6. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment in the workplace and provides annual sexual harassment training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the New York State Labor Law.

Date:

(Legal Name of Person, Corporation, or Firm Which  
is Submitting Bid or Proposal)

BY: \_\_\_\_\_  
(Signature of Person Representing Above)

AS: \_\_\_\_\_  
(Official Title of Signator in Above Firm)  
(Acknowledgment by Individual Contractor, If a Corporation)

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me  
personally came \_\_\_\_\_, to me known and known  
to me to be the person who executed the above instrument, who being duly sworn by me, did  
depose and say that he/she resides at

\_\_\_\_\_, and that he/she is the  
of the

the corporation described in and which executed the above instrument, and that he/she signed  
his/her name thereto on behalf of said Corporation by order of the Board of Directors of said  
Corporation.

Notary Public

(Acknowledgment by Co-Partnership Contractor)

STATE OF NEW YORK        )  
  ) SS:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before  
me  
personally came \_\_\_\_\_, to me known and known  
to  
me to be the person described in and who executed the above instrument, who, being duly  
sworn  
by me, did for himself/herself depose and say that he/she is a member of the firm of  
, consisting of himself/ herself and  
, and that he/she executed the foregoing instrument in the firm name of  
and that  
he/she had authority to sign same, and did duly acknowledge to me that he/she executed same

as  
the act and deed of said firm of  
and  
purposes mentioned herein.

for the uses

\_\_\_\_\_  
Notary Public

(Acknowledgment by Individual Contractor)

STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF                                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally came \_\_\_\_\_, to me known and

known to me to be described in and who executed the foregoing instrument, and that he/she  
acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

**NON-COLLUSIVE BIDDING CERTIFICATION BIDDER INFORMATION**

Bidder to provide information listed below:

Bidder Address: \_\_\_\_\_  
Street or P. O. Box No.

City \_\_\_\_\_

State \_\_\_\_\_ ZIP \_\_\_\_\_

Federal Identification No.: \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Phone # of Contact Person: \_\_\_\_\_

If Bidder is a Corporation:

President's Name & Address: \_\_\_\_\_

Secretary's Name & Address: \_\_\_\_\_

Treasurer's Name & Address: \_\_\_\_\_

If Bidder is a Partnership:

Partner's Name & Address: \_\_\_\_\_

Partner's Name & Address: \_\_\_\_\_

If Bidder is a Sole Proprietorship:

Owner's Name & Address: \_\_\_\_\_

**REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES,  
MISCONDUCT, OR OTHER PROHIBITED CONTRACT ACTIVITIES**

U. S. DEPARTMENT OF TRANSPORTATION HOTLINE. Persons with knowledge of bid

collusion (i.e., contractors, suppliers, workers, etc.) or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.) are encouraged to report such activities by calling the U. S. D. O. T. HOTLINE. The HOTLINE number is 1-800-424-9071 and calls will be answered from 8:00 A.M. to 5:00 P.M. EST, Monday thru Friday. This HOTLINE is under the direction of the U.S.D.O.T.'s Inspector General. All information will be treated confidentially and the caller's anonymity will be respected.

NEW YORK STATE INSPECTOR GENERAL HOTLINE. Reports of New York State Governmental Misconduct may be made in strict confidence to the New York State Inspector General on the Toll Free Statewide HOTLINE or by writing to the Office of the Inspector General. The Toll Free Statewide HOTLINE telephone number is 1-800-367-4448 and calls will be answered between 8:00 A.M. and 4:30 P.M., Monday through Friday. The address of the Office of the State Inspector General is the State Capitol, Executive Chamber, Albany, New York 12224.

**THIS IS REQUIRED IN ALL FEDERAL AID CONTRACTS.**

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

**[SEE SECTION 102-11 OF THE  
NEW YORK STATE  
DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS]**

**GOALS FOR MINORITY PARTICIPATION IN THE CONSTRUCTION INDUSTRY**

COUNTY	% GOAL	COUNTY	% GOAL	COUNTY	% GOAL
Albany	3.2	Herkimer	2.1	Richmond	*
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	*	St. Lawrence	2.5
Bronx	*	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	*	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	*	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

\* The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens, and Richmond:

Electricians.....	9.0 to 10.2
Carpenters.....	27.6 to 32.0
Steam Fitters.....	2.2 to 13.5
Metal Lathers.....	26.0 to 28.6
Operating Engineers.....	25.6 to 26.0
Plumbers.....	12.0 to 14.5
Iron Workers (Structural).....	25.9 to 32.0
Elevator Constructors.....	5.5 to 6.5
Bricklayers.....	13.4 to 15.5
Asbestos Workers.....	22.8 to 28.0
Roofers.....	6.3 to 7.5
Iron Workers (Ornamental).....	22.4 to 23.0
Cement Masons.....	23.0 to 27.0
Glaziers.....	16.0 to 20.0
Plasterers.....	15.8 to 18.0
Teamsters.....	22.0 to 22.5
Boilermakers.....	13.0 to 15.5
All Others.....	16.4 to 17.5

#### GOALS FOR WOMEN

##### Female Goals - 6.9%

Goals for the utilization of women by Federal and Federally assisted construction contractors were last published on April 7, 1978 (43 CFR 4988, 149000). That April 7, 1978 publication included a 6.9% goal for the period from April 1, 1980 until March 31, 1981. Pursuant to 41 CFR 60-4.6, the 6.9% goal for female utilization is extended until further notice

FHWA-1273 -- Revised May 1, 2012

# REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

## ATTACHMENTS

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

### I. GENERAL

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

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

responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

4. Selection of Labor: During the

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

## II. NONDISCRIMINATION

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

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

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

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

related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

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

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

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

d. Notices and posters setting forth the

contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

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

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

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

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

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

with employees.

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating,

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

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

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

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

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

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

paying employment.

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

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

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

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:**

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable

accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

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

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

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

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

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

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

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be

retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

The contractor must ensure that facilities

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be

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

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

place where it can be easily seen by the workers.

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in

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

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

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

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

## **2. Withholding**

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

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of

the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a

subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

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

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

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

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

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

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

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

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

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

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

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by

the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

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

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

under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the

compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

**10. Certification of eligibility.**

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

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

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

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

hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

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

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

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

**1. Instructions for Certification – First Tier Participants:**

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions"

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for

ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

\* \* \* \* \*

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

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

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

(2) Have not within a three-year period preceding this proposal been convicted of or

had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

## 2. Instructions for Certification - Lower Tier Participants:

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

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

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the

department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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

remedies, including suspension and/or debarment.

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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.

**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 done as on-site work.

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,

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**DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS  
FOR FEDERAL AID CONTRACTS**

**[SEE SECTION 102-12 OF THE  
NEW YORK STATE  
DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS]**

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**SPECIAL TRAINING PROVISIONS**

**GENERAL.** The primary objective of this Training Special Provision is to provide training opportunities to minority and disadvantaged persons and women in construction trades for two purposes:

1. To maintain a pool of qualified minority and disadvantaged persons and women to replace those journeyworkers who, in the natural course of events, will leave the workforce; and
2. To provide minority and disadvantaged persons and women as indentured apprentices or trainees in those geographic areas where shortages in minority and women journeyworkers are recognized because of the Contractor's inability to meet the Equal Employment Opportunity (EEO) goals set forth in this contract.

This work shall consist of the employment and meaningful and effective training of minority and disadvantaged persons and women in training programs approved by the N. Y. S. Department of Transportation leading to their qualifications as journeyworkers in the skilled trades required in highway construction. This Training Special Provision supplements the Equal Employment Opportunity requirements included elsewhere in this Proposal entitled either "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" or "Equal Employment Opportunity Requirements." Each of the foregoing prescribes specific percentage goals for utilization of minorities and women in the performance of work for the geographic area location of the contract.

Each contract which contains this Training Special Provision shall require the training of at least one minority or woman indentured apprentice or trainee. Such individual shall be either approved or selected by the Owner with concurrence by the Department of Transportation. Other than this initial training obligation, to be undertaken and provided by the Contractor, no additional training obligations will exist under this Training Special Provision unless the goals for minority and women employment and training in the skilled workforce (exclusive of laborers) are not continuously met on the contract and generally distributed amongst the trades. In the five counties of New York City, the goals specified for each trade are applicable. Whenever the goals are not met, additional minority and/or women indentured apprentices and/or trainees will be assigned or approved in numbers necessary to meet the goals. Data necessary to determine if goals are being met will be provided on Contractor and Subcontractor Monthly Employment Utilization Reports (Form AAP 33LL) submitted by the Contractor on a monthly basis to the Engineer-in-Charge of the construction contract, or other agent of the Owner responsible for administering the contract, or other forms approved by the Department of Transportation.

The data will be verified by the visual observance of the Engineer-in-Charge, or designated project inspectors, or other agent of the Owner, and hours of employment reported on Contractor and Subcontractor certified weekly payrolls. The number of minority and women indentured apprentices and trainees required to be trained under this item shall not exceed the equivalent of 12 1/2% of the total journeyworker workforce on the contract (counted in hours worked), i.e., no more than 1 in 8 of the skilled workforce is required to be a minority or woman indentured apprentice or trainee. This limitation applies regardless of minority or women representation in the trades. However, this limit on required training in no way absolves the

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Contractor of the responsibility to comply with the EEO contract requirements.

1/ Disadvantaged means a person who is either: (a) a member of a family that receives public assistance; or (b) a member of a family whose income during the previous six (6) months, on an annualized basis, was such that: (1) the family would have qualified for public assistance, if it had applied for such assistance; or (2) it does not exceed the poverty level. NOTE: The name, address, and social security number of candidates to be trained under the disadvantaged criteria must be submitted to the Owner accompanied by related economic documentation for approval prior to commencing training

2/ Journeyworker means a person who is capable of performing all the duties within a trade or a given work classification of a trade approval prior to commencing training, subject to concurrence by the Department of Transportation.

**PRECONSTRUCTION MEETING.** Before the Contractor will be allowed to begin work, the Contractor shall attend a Preconstruction Meeting and shall submit for the Owner's use and acceptance, a Manpower and Training Utilization Schedule (Form AAP 35) which shall be correlated to the Contractor's work schedule. The Schedule shall include at least the following information:

1. A work schedule for the entire contract,
2. An estimate of the work force required to conform to the work schedule on a monthly basis including an estimate of the work force in each trade and/or work classification projected to be used,
3. Separate estimates of the number of minority and women indentured apprentices or trainees that would be required in each skilled trade to meet the contract EEO employment goals for that trade assuming no minority or women journeyworkers in the workforce,
4. The approved training programs to be used and the proposed starting dates for training in each trade and/or work classification,
5. An estimate of the availability of minority and women journeyworkers in numbers sufficient to meet the EEO contract goals, and
6. Any proposal by the Contractor to use trainees or indentured apprentices to make up for anticipated EEO goal shortfalls. Such proposals shall include the name and craft of any individual proposed by the Contractor as the required trainee or indentured apprentice. In the case of an indentured apprentice, evidence of indentureship and registration of the approved apprenticeship program must be included.

No contract work may be undertaken until the Owner has accepted the Schedule and obtained the concurrence of the Department of Transportation. The Contractor shall submit a revised Manpower and Training Utilization Schedule at such times as major changes in the contract work schedule or a significant workforce buildup occurs which substantially affect the previously

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submitted Schedule.

**RECRUITMENT.** Although the training requirements of this Training Special Provision are not intended, and shall not be used to discriminate against any applicant for training, whether a member of a protected class or not, it is recognized that non-minority males have traditionally been and continue to be trained, either formally or on-the-job in an informal manner, for work in the trades utilized in construction work. Therefore, until such time that representative numbers of minorities and women complete training and their utilization as journeymen is demonstrated to the extent of the participation goals set forth in the Department of Transportation's construction contracts, training required under this Training Special Provision will be primarily limited to minorities, women, and disadvantaged individuals.

Thus, the Contractor shall demonstrate compliance with the intent of this Training Special provision by affording the Owner, with the concurrence of the Department of Transportation's appropriate Regional Compliance Specialist (RCS), the opportunity to:

1. First, approve the use of a minority or woman indentured apprentice known to the Contractor through an existing Joint Apprenticeship Training Program, or
2. Second, provide a partially-trained minority or woman trainee who is currently enrolled in a New York State Department of Transportation approved training program, or
3. Third, work cooperatively with the Contractor in recruitment of new minority or women trainees, when needed.

In conformance with the foregoing, the Contractor should submit a Department of Transportation Form AAP-17, Request for Personnel, to the Owner at the Preconstruction Meeting, and the Owner should seek concurrence of that from Department of Transportation's Regional Compliance Specialist. The Contractor is responsible for ensuring that on-the-job orientation for approved indentured apprentices or assigned trainees is provided to such individuals within their first month of employment.

**WORK HISTORY.** No individual shall be employed as a trainee or indentured apprentice in any trade and/or work classification in which such person has successfully completed a training course providing journeyworker status in the same trade or work classification, or in which such person has been gainfully employed as a journeyworker by virtue of informal on-the-job training. Detection of individuals in the above categories may be accomplished by including appropriate questions on employee application forms, inquiries to the Department of Transportation Regional Compliance Specialist, checking personal references, or by other suitable means. Regardless of the method used, the Contractor shall document the findings for each indentured apprentice or trainee provided training under this requirement. A copy of the findings shall be given to the Owner's Engineer or agent in charge of the project, who shall request concurrence of the Department of Transportation. In the case of indentured apprentices, evidence of indentureship in a registered approved apprenticeship program shall also be provided.

**SUBCONTRACTING.** In the event the Contractor subcontracts a portion of the contract work, the Contractor shall ensure that the requirements of this Training Special Provision are physically incorporated into such subcontracts to ensure that the workforce utilized by the

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Subcontractor meets the goals for minority and women employment and training, either independently or in combination with the Contractor's workforce. The Contractor must determine the hours of training, if any, and in which trade or work classifications, minority or women indentured apprentices or trainees are to be trained by the Subcontractor(s). However, the Contractor shall retain the primary responsibility for meeting the training requirements of this Training Special Provision. Subcontractors are herewith advised that disregard of these requirements may result in the Department of Transportation either rescinding approval or disapproving their use on subsequent contracts let by the Department of Transportation or on contracts let by other agencies under agreement to the Department of Transportation.

**TRAINING AND APPRENTICESHIP PROGRAMS.** The minimum length, type of training, and rate of pay for the trade or the work classification of the trade will be specified in the training program approved or sanctioned by the New York State Department of Transportation with the concurrence of the Federal Highway Administration. Both of these agencies shall approve or sanction a training program if it meets the Equal Employment Opportunity obligation of the Contractor and qualifies the trainee for journeyworker status in the trade or work classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved, but not necessarily sponsored, by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided they are administered in a manner consistent with the Equal Employment Opportunity obligations of New York State Department of Transportation construction contracts. A copy of the training programs approved by the NYSDOT will be made available by the NYSDOT upon request by the Owner or the Contractor. The Contractor shall provide a copy of the approved apprenticeship or training program to the indentured apprentice or trainee.

Where training is to be provided under this Training Special Provision, the Contractor shall obtain acceptance or approval of the training or apprenticeship program to be used, and the starting time for training, prior to commencing training. The Contractor shall provide on-the-job training directed toward developing journeyworkers in the trade, or work classification(s) of the trade, involved. To the extent that the work involved on the contract permits, such training should include all phases and facets of a trade, or work classification of a trade, to satisfy usual construction industry requirements for continued or future employment therein. Additionally, the Contractor shall provide a minimum of 144 hours per calendar year of related classroom training at an approved facility for each individual so enrolled, in accordance with Article 23 of the New York State Labor Law, Section 815.3.

**WAGES.** Indentured apprentices will be paid at least 60 percent of the appropriate prevailing wage rate specified in the contract for the same trade or work classification for which they are being trained for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. Trainees will be paid the appropriate prevailing wage specified in the contract for the same trade or work classification for which they are being trained.

Indentured 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 determinations for

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the applicable classification. On-the-job (OJT) trainees shall be paid fringe benefits in accordance with the provisions of the prevailing wage rates.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determinations unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyworker wage rate on the wage determination which provides for less than full benefits for apprentices.

**DURATION OF TRAINING.** Once an indentured apprentice is approved or a trainee is assigned to the contract under this Training Special Provision, that individual shall be trained in the designated trade throughout the duration of the contract whenever such trade is in use on the contract until the trainee or indentured apprentice has completed the approved training program. Where training is provided under a multi-phase apprenticeship or training program, it is expected that training will be provided continually through all phases to the extent that opportunities for such training exist in the work under contract. Upon satisfactory completion of a phase of training under a multi-phase apprenticeship or training program, if training in the remaining phases is not available and work in the completed phase is available, the minority or woman indentured apprentice or trainee shall continue employment, and be compensated at the prevailing journey worker wage rate for such work. Hours of employment as a journey worker described above will not be credited toward training hours required by the approved training or apprenticeship program.

A trainee may be terminated at any time during training for excessive absenteeism, lack of punctuality, accident-proneness, lack of interest, poor attitude, and continued failure to conduct his/herself in a professional manner. However, termination will not occur prior to proper counseling, documentation, and notification in writing to the Owner's Engineer or agent in charge of the project, and to the Department of Transportation's Regional Compliance Specialist, and subsequently, the concurrence of the Owners' engineer or agent and the NYSDOT Regional Compliance Specialist, with that termination.

**REQUIRED RECORDS.** The Contractor shall provide each minority or woman trained under this provision with a certification showing the type and length of training satisfactorily completed. In addition, the Contractor shall keep records on the job site indicating the nature and hours of training provided to each trainee or indentured apprentice documenting performance under this Training Special Provision to the Owner's Engineer or agent in charge of the project and to the Department of Transportation's Regional Compliance Specialist. Form AAP-42a, Training Report, will be submitted once the trainee or indentured apprentice commences training, completes training, or is terminated and each December 31st that individual is in training. Form AAP-26a, Monthly Training Progress Report, will be submitted every month after the individual commences training. No measurement will be made of training provided to indentured apprentices or trainees for whom no work history has been provided to the Owner's Engineer or agent in charge of the project. In addition, no measurement will be made of the training provided to apprentices for whom no evidence of indentureship in a registered program has been provided to the Owner's Engineer or agent in charge of the project.

**NO PAYMENT FOR TRAINING.** No payment will be made to the Contractor for the training required by this Training Special Provision. The required training is a labor cost which is

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included in the unit prices bid by the Contractor for the Items of work comprising the contract.

**LISTS OF OJT & REGISTERED APPRENTICESHIP PROGRAMS.** Effective April 1, 1992, the New York State Department of Transportation commenced a demonstration program in NYSDOT Regions 2, 3, 5, and 11 requiring the exclusive use of apprenticeship training to fulfill the Training Special Provision and supplement EEO goal attainment. In the remaining NYSDOT Regions, contractors will be allowed to use on-the-job training (OJT) programs during the period of the demonstration project. However, only OJT programs for crafts that have been deemed as apprentice-able occupations will be approved. In order to ease the transition from OJT to apprenticeship, it is required that all OJT participants receive related classroom instruction.

It is the policy of the New York State Department of Transportation to afford equal employment opportunity to traditionally socially and economically disadvantaged persons by providing training opportunities to minority and disadvantaged persons and women to improve their potential for construction employment. NYSDOT, therefore, provides training as a contract requirement on selected construction contracts, including those let by other agencies and local governments under an agreement with NYSDOT.

When OJT is to be provided under this Training Special Provision, the Contractor shall obtain acceptance from the Owner and NYSDOT for the OJT Program to be utilized and the starting time frame for training, prior to commencing training. Accordingly, the following is a listing of OJT programs which have been approved by the NYSDOT and the Federal Highway Administration (FHWA) for utilization in NYSDOT Regions 1, 4, 6, 7, 8, and 10.

**NOTE: A contractor in these Regions may opt to use either OJT or apprenticeship programs. However, the use of apprenticeship programs is strongly encouraged.**

#### APPROVED OJT PROGRAMS

1. Carpenter

10.10 Carpenter Training Program (Highway and Bridge)

2. Mason

20.10 Concrete Finisher/Cement Mason Training Program

3. Operating Engineer

30.20 Roller & Bulldozer Operator Training Program

30.21 Crane, Clamshell, Derrick, and Dragline Operator Training Program (1 1/2 yd. under/over)

30.22 Roller and Front End Loader Operator Training Program (1 cu yd under/over)

30.23 Roller and Grader Operator Training Program

30.24 Roller and Scraper Pan Operator Training Program

30.25 Heavy Duty Mechanic Training Program

4. Ironworker

40.10 Ironworker (Reinforcing and Structural) Training Program

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5. Rodman  
50.10 Instrument person Training Program

6. Painter  
60.10 Painter Training Program

7. Welder  
90.10 Heavy Duty Welder Training Program

**REQUIREMENTS REGARDING TRAINING IN FEDERAL AID CONTRACTS**

Apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with the New York State Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided that they are being administered in a manner consistent with the Equal Employment Opportunity obligations of NYSDOT construction contracts.

**APPROVED APPRENTICESHIP PROGRAMS**

NYS Dept. of  
Labor #

NYSDOT #

TITLE

1. Carpenter  
860.381.022 10.01 Carpenter Apprentice Locals # 1093, 1379, 1772, 1292 & Carpenters JAC of Nassau County  
842.361.010 10.02 Lather (Carpenter)  
860.381.022 10.03 Carpenter Apprentice Open Shop Association

2. Mason  
844.364.010 20.01 Cement Finisher Apprentice  
861.381.018 20.02 Bricklayer & Mason Apprentice Locals #1, 9, 21, 30, 34, 37, & 41, and Bricklayer JAC of New York  
844.364.010 20.03 Cement Mason Apprentice  
844.364.010 20.04 Cement Mason Open Shop Association

4. Operating Engineer  
859.683.010 30.01 Heavy Equipment Operator Apprentice Locals #138, 138A, 138B, & International Union of Operating Engineers  
859.683.010 30.02 Equipment Operator Apprentice Locals #106, 410, 463, 545, & 832  
620.261.022 30.03 Operating Engineer Apprentice-Heavy Duty Repairperson  
859.683.010 30.04 Equipment Operator Apprentice Grade 7 Paving  
859.683.010 30.05 Operating Engineer Open Shop Association  
859.683.010 30.06 Operating Engineer Apprentice Program - Local 17  
859.683.010 30.07 Operating Engineer Apprentice program - Local 825  
859.683.010 30.08 Operating Engineer Universal Equipment Apprentice - Local 137  
018.167.018 30.09 Field Engineer Surveyor Apprentice - Local 825

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859.683.010 30.10 Heavy Equipment Operator Apprentice (International Union of Operating Engineers) - Locals 14 & 14B

5. Ironworker

801.361.014 40.01 Ornamental Ironworker Apprentice

801.361.014 40.02 Ironworker Apprentice

6. Technical Engineer

018.167.018 50.01 Technical Engineer Apprentice

018.167.018 50.02 Technical Engineer Surveyor Apprentice - Locals 106, 410, 463, 545, & 832

869.381.010 50.03 Rodperson Apprentice

7. Painter

840.381.010 60.01 Painter & Decorator Apprentice

8. Electrician

824.261.010 80.01 Electrician Apprentice Program - Locals 3 & 25

**REQUIRED ON ALL FEDERAL AID CONTRACTS OF \$1,000,000 OR MORE, AND MUST BE PUBLISHED IN THE BID PROPOSAL REGARDLESS OF WHOSE SPECIFICATIONS ARE USED.**

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**LPM**

**CHAPTER 13**

**CIVIL RIGHTS  
REQUIREMENTS**

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**NOTE:** This Chapter has associated appendices and forms which can be found at [www.dot.ny.gov/plafap](http://www.dot.ny.gov/plafap).

## 13.1 INTRODUCTION

This chapter is an overview of federal Civil Rights laws, rules, regulations, and presidential executive orders for locally administered federal aid transportation projects. It has always been the New York State Department of Transportation's (NYSDOT) policy to ensure equal opportunity and to prevent and eliminate discrimination in all of its activities. NYSDOT and project Sponsors share this compliance responsibility in meeting the requirements for federal Civil Rights law on locally administered federal aid transportation projects. Other Chapters in the Procedures for Locally Administered Federal Aid Projects (PLAFAP), NYSDOT's Construction Administration Manual or CAM, the Highway Design Manual or HDM, and the Regional Local Project Liaison's (RLPL) direction provide more Civil Rights functional guidance.

## 13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin. Specifically, 42 USC 2000d states that:

*No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*

As amended, Title VI includes other nondiscrimination statutes affording legal protection, which include protection on the basis of sex, age, and disability through Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 USC 324) [sex], Age Discrimination Act of 1975 [age], and Section 504 of the Rehabilitation Act of 1973/Americans With Disabilities Act of 1990 [disability]. Taken together, these requirements define the Title VI program and requirements.

Title 23 **CFR 200** clarifies that programs and activities receiving federal financial assistance from the United States Department of Transportation (USDOT) are required to comply with Title VI requirements. This includes Sponsors who receive Federal Highway Administration (FHWA) funding through NYSDOT. As sub-recipients of federal financial assistance on locally administered federal aid transportation projects, Sponsors must have policies and procedures in place that address Title VI requirements.

### 13.2.1 Sponsor's Title VI Requirements

Title VI Assurance is a shared responsibility for all parties involved in delivering federal aid projects. For example, Sponsors must submit minority contracting information to the RLPL prior to awarding any contract and work with NYSDOT staff to assure data and process quality throughout the project delivery and construction processes. NYSDOT requires software reporting, currently in EBO or Equitable Business Opportunities software, to monitor construction contract payments and DBE goals, commitments, and attainments. The results go into NYSDOT's semi-annual Title VI Compliance Reviews and assist our regular monitoring efforts.

Sponsors are required to implement a system of procedures and actions for Title VI compliance, including:

- Developing Title VI Assurances and a Title VI Policy Statement identifying a Title VI Coordinator, also known as the Sponsor's Responsible Local Official (RLO).
- The RLO must have a responsible position in the Sponsor's organization and have 'easy access' to the agency's leadership.
- Notifying all departments in the Sponsor's organization of the Title VI Coordinator's responsibilities for initiating and monitoring Title VI activities.

- Developing procedures for processing external discrimination complaints.
- Notifying NYSDOT of any external discrimination complaints and lawsuits.
- Providing accommodations for Limited English Proficient (LEP) persons as needed.
- Ensuring nondiscrimination in the Sponsor's public participation process.
- Collecting and analyzing data to ensure nondiscrimination in the Sponsor's policies, programs, and activities.
- Ensuring that contracts contain the appropriate Title VI contract provisions.
- Ensuring non-discrimination in contract awards.

The Title VI Coordinator's or RLO's responsibilities include:

- Identifying DBE goals and commitments during the contract pre-award phase and completing the award package and certifications detailed in Chapter 14.
- Assisting program personnel with Title VI problems or any discriminatory practices in the contracting and construction processes by monitoring contract to progress up to contract completion and closeout as outlined in Chapter 15.
- Take appropriate action when notified by NYSDOT of any potential Title VI problems or discriminatory practices.
- Being the point of contact for Title VI implementation and monitoring of programs. Work with industry to meet DBE and EEO goals including Good Faith Efforts or GFE when needed. The Sponsor should post explanations, exceptions, and requests for additional GFE information, under 'Notes' in EBO.
- Ensuring that Title VI requirements are included in any internal policy directives and procedures.
- Implementing procedures for the prompt processing of Title VI external discrimination complaints
- Attend training, and assure sponsor's staff has adequate training, on Title VI and other nondiscrimination activities as needed.
- Coordinating the development and implementation of any needed Title VI and related statutes training programs.
- Developing Title VI information for public dissemination, and where appropriate, in languages other than English.

Sponsors shall prohibit discrimination during all phases of the work, whether directly or through their consultants and contractors, by monitoring and managing the work for compliance. Some discriminatory examples may include:

- Denying program services, financial aid, prompt payment, or other benefits.
- Providing different program services, financial aid, or other benefits; or providing them in a manner different from that provided to others.
- Segregating or separately treating individuals or groups in any matter related to the receipt of any program service, financial aid, or benefit.
- Restricting in any way the enjoyment of any advantage or privilege enjoyed by others receiving any program service, financial aid, or other benefits.
- Denying persons, the opportunity to participate as a member of a planning, advisory, or similar body; or
- Denying persons, the opportunity to participate in any program or activity that receives Federal financial assistance.

Sponsors have the option of:

- Adopting by resolution NYSDOT's own Title VI Plan (see Appendix 13-5 Title VI Plan).
- Developing their own Title VI Plan using Appendix 13-5 as a guide.

The State-Local Agreement (SLA) contractually obligates the Sponsor to ensure that all federal civil rights laws, rules, regulations, and presidential executive orders are adhered to in *all* of their policies, procedures, programs, and activities.

### **13.2.2 Title VI Complaints**

The Sponsor shall develop procedures for prompt processing and disposition of external Title VI Discrimination Complaints. The Sponsor's Title VI Coordinator or designee shall conduct a preliminary inquiry to determine the validity and jurisdiction of the complaint, including reasonable attempts to resolve all complaints at the lowest administrative level. Any person who believes that they have been discriminated against based on their race, color, national origin, sex, age or disability in a program, activity, or service may file a complaint with the Sponsor or an agency funded through the Sponsor.

The complaint may be filed by the individual or their representative. A complaint must be filed no later than 180 days after the date of the alleged act of discrimination. Copies of all Title VI Discrimination Complaints received by the Sponsor must be forwarded to NYSDOT's Office of Civil Rights, with a copy sent to the Regional Local Project Liaison (RLPL). If the complainant is not satisfied with the Sponsor's investigation or the resolution of the complaint, the complainant may follow-up directly with NYSDOT's Office of Civil Rights.

Examples that demonstrate compliance include:

- Written procedures for processing and investigating external discrimination complaints
- External discrimination complaints filed under Title VI against the Sponsor in which the Sponsor or its sub-recipient is named as the respondent. (Complaints should be forwarded to NYSDOT's Office of Civil Rights for investigation within 10 calendar days.)
- Complaint log or method to track complaints that identifies:
  - Each complainant by race, color, sex, and national origin
  - The recipient of the complaint
  - The nature of the complaint
  - The date(s) the complaint was filed and the date the investigation completed
  - The disposition
  - The date of the disposition

Other pertinent information:

- Methods to distribute external discrimination complaint handling procedures to agency personnel
- List of personnel trained in handling external discrimination complaint investigations and the training they attended
- Methods for making the public aware of the procedures for filing a discrimination complaint, such as information on an external Web site or brochure
- External discrimination complaint form

### **13.2.3 Title VI Program Reviews**

In accordance with **23 CFR 200.9(b)**, NYSDOT must conduct Title VI program reviews of sub-recipients, including Sponsors. The purpose of the program reviews is to evaluate the Sponsor's programs, policies, procedures, contract specifications, manuals, etc. in order to ensure compliance with the requirements of Title VI of the Civil Rights Act of 1964, as amended. Sponsors should summarize how they monitor nondiscrimination in their relevant programs and activities, which could include the following program areas:

- Planning
- Project Development (Design)
- Right-of-Way
- Construction
- Public Involvement
- Research

Formalized reviews must be conducted externally on sub-recipients of federal funds. Sub-recipients include all sponsor agencies through which NYSDOT passes Federal funds, including local agencies, colleges, universities, and MPOs. Because 59% of federal aid projects were delivered by local Sponsors in 2013, this represents a large portion of NYSDOT's program, making this an important process.

*Title 23 CFR 200.9(b)(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.*

*(13) Establishing procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.*

These formalized compliance reviews are a critical component of a Title VI program, not just because they are required by **23 CFR 200.9**, but because they are the primary mechanism for assuring nondiscrimination in internal NYSDOT functions and sub-recipients. NYSDOT's program review of Sponsors will consist of formal reviews conducted by the Office of Civil Rights. Staff from NYSDOT's Office of Civil Rights will initiate and conduct the review after notifying the Sponsor. The RLPL will be copied on all correspondence concerning Title VI program reviews.

### **13.3 AMERICANS WITH DISABILITIES ACT (ADA)**

Section 504 of the 1973 Rehabilitation Act (**Public Law 93-112**) prohibits discrimination on the basis of disability in federally assisted programs. Section 504 requirements for the U.S. Department of Transportation (USDOT) are covered in **49 CFR Part 27**, nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. The Americans with Disabilities Act (ADA, 1990, **Public Law 101-336**) is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life.

Sponsor's Oversight Responsibilities must:

- Ensure all municipal departments are informed of their responsibilities to provide accessibility in their activities, programs, services, and facilities (i.e. department's public rights-of-way)
- Ensure the Sponsor and its sub-recipients are applying appropriate accessibility standards to their transportation facilities as defined in NYSDOT's Highway Design Manual (HDM).
- Ensure that all complaints filed under Section 504 and/or the ADA are processed in accordance with established complaint procedures.
- Ensure that their ADA Transition Plan is in place and updated per Section 13.3.3 ADA Transition Plan.

### **13.3.1 Nondiscrimination**

Title **49 CFR 27.7** requires all programs, services, and facilities are made available to and usable by persons with disabilities. The ADA requires public facilities and programs to be accessible regardless of the funding source. The Act also requires effective communication with persons with disabilities, and state and local governments must respond to their requests. Communication venues and media (public meetings, announcements, publicity, etc.) must also be accessible. Any public meetings or outreach during project development shall comply with Title 49 requirements.

### **13.3.2 Self-Evaluation**

Title **49 CFR 27.11** requires federal aid recipients and subrecipients to conduct self-evaluations of policies, practices, and programs for compliance with ADA.

Title **28 CFR 35.105** is the USDOJ Title II regulation and requires public entities (whether or not they are the recipient of federal aid) to evaluate their current programs, services, and activities, and to make the self-evaluation available for public comment. A template for self-evaluation, the ADA Transition Plan Checklist, can be found in Appendix 13-2.

### **13.3.3 ADA Transition Plan**

Title **28 CFR 35.150(d)(1)** requires "a public entity that employs 50 or more persons" to prepare an *ADA Transition Plan* identifying non-compliant pedestrian routes and facilities in the municipal Sponsor's public right-of-way. ADA Transition Plans shall also include a plan and schedule for corrective action. Failure to create and maintain an ADA Transition Plan may result in an entity's ineligibility to receive federal funds.

If a public entity employs fewer than 50 persons, the entity need only conduct self-evaluations (see section 13.3.2).

The ADA Transition Plan should include detailed information about, the condition of the Sponsor's pedestrian accessible route network, a list of the physical barriers that limit accessibility on pedestrian facilities, and the schedule to correct any noncompliance; this should include identifying the party responsible for planning the corrective action to ensure all Sponsor facilities are accessible to individuals with disabilities. The completed ADA Transition Plan must also be made available for Public Comment. Reference **28 CFR 35.150(d)(3)(i-iv) and (d)(1)**.

NYSDOT developed Appendix 13-2, ADA Transition Plan Checklist, and Appendix 13-3 ADA Transition Plan (fillable forms), to assist Sponsors in preparing their ADA Transition Plans. Sponsors are strongly encouraged to use the ADA Transition Plan Checklist in Appendix 13-2 as a guide when preparing their own ADA Transition Plan.

NYSDOT has developed its ADA Transition Plan, which includes an inventory of sidewalks and curb ramps alongside state-owned transportation infrastructure, and a rating for accessibility of each. NYSDOT continues to update this inventory as it completes capital work at these locations as well as periodically refreshes the statewide inventory.

NYSDOT may construct sidewalks, curbs, and curb ramps alongside State highways located in Villages (NYS Highway Law Section 46), Towns (NYS Highway Law Section 140), and Cities (NYS Highway Law Section 349-c); however, under the statutory provisions granting NYSDOT such authority, respective Villages, Towns and Cities are responsible for repairing and maintaining sidewalks, curbs, and curb ramps in their respective municipality. Maintenance

includes both preventive and corrective maintenance. For further information, consult the applicable Highway Law Sections provided above.

When NYSDOT alters a State highway that provides pedestrian access, NYSDOT must design and construct the State highway in such a manner that a barrier to the usability of the streets by a protected class (individuals with disabilities) is not created or retained. (**See 28 CFR 35.150, 35.151(b and i)**). If NYSDOT does not alter the State highway, it remains the municipality's legal responsibility to comply with applicable ADA accessibility requirements.

A Sponsor's ADA Transition Plan shall include a list of locations with physical barriers that limit the accessibility of programs, activities, or services within its jurisdiction, including those identified alongside State highways. However, to ensure a clear understanding of anticipated and upcoming NYSDOT capital work, municipalities should discuss the State inventory and NYSDOT plans with the Regional Local Project Liaison (RLPL).

The Sponsor's completed ADA Transition Plan must be made available for Public Comment. For more information regarding ADA Transition Plans, contact the RLPL.

#### **13.3.4 Design and Construction**

Sponsors must comply with ADA accessibility standards for all facilities they construct, maintain, monitor, or upgrade. Compliance applies to all projects classified as new construction, reconstruction, rehabilitation, or repair, as well as any work undertaken by the Sponsor's forces. Therefore, existing and proposed pedestrian facilities in a public right-of-way must be provided. The applicability of design and construction standards are addressed in Chapter 9 of this manual.

The Department of Justice and the Federal Highway Administration clarified in the 2013 DOJ/DOT Joint Technical Assistance Informal Guidance Document (<https://www.ada.gov/doj-fhwa-ta.htm>) that "pavement alteration" activities require a Sponsor to address compliance, and distinguished between "pavement maintenance" activities which do not require such compliance. This guidance further clarifies this requirement stating that whenever a "pavement alteration" is made to a street, roadway, or highway, curb ramps must be provided at locations where there are curbs or other barriers restricting access to sidewalks or other pedestrian walkways. Examples of "**pavement alterations**" include additions of new asphalt layers, in-place recycling, micro-surfacing/thin lift, mill and fill overlays, open-graded surface courses, cape seals, new construction, rehabilitation, and reconstruction. Curb ramps and detectable warnings are required to be installed before or during the "pavement alteration" project. Examples of "pavement maintenance" include crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub seals, joint crack seals, dowel bar retrofits, spot locations of high-friction surface treatments, diamond grinding, or pavement patching. See NYSDOT Highway Design Manual (HDM) Chapter 7 and Chapter 18 and the DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental for more guidance.

#### **13.4 ENVIRONMENTAL JUSTICE (EJ)**

**Presidential Executive Order (EO) 12898**, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs each Federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. **23 CFR 450** requires States and Metropolitan Planning Organizations (MPOs) to seek out and consider the needs of those traditionally underserved by

existing transportation systems, including, but not limited to, low-income and minority households. There are three fundamental Environmental Justice principles:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority populations and low-income populations.
2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority populations and low-income populations.

Sponsors must consider EO 12898, along with existing requirements under Title VI of the Civil Rights Act of 1964, and other statutes and regulations, during project development so that the interests and well-being of minority populations and low-income populations are considered during transportation decision making, including alternative analysis and project selection. For more information concerning Environmental Justice, contact NYSDOT's Office of Civil Rights.

### **13.5 LIMITED ENGLISH PROFICIENCY (LEP)**

***Presidential Executive Order 13166*** *Improving Access to Services for Persons with Limited English Proficiency*, contains two major initiatives. The first is designed to better enforce and implement Title VI, which prohibits recipients and sub-recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who have Limited English Proficiency. The second initiative requires all federal agencies to meet the same standards as federal financial assistance recipients and sub-recipients by providing meaningful access to federally funded programs. Put simply, Sponsors and the federal government must provide materials in other languages or translate at meetings when individuals have Limited English Proficiency.

Sponsors shall consider implementing the following to demonstrate LEP compliance:

- Written translation of the agency's vital documents
- Language Implementation Plan
- Bilingual staff for translation
- Language needs assessments or efforts to consider the following:
  - The number or proportion of LEP persons in the eligible service population
  - The frequency with which LEP individuals come in contact with the Sponsor's programs or activities
  - The program's importance, activity or services provided by the Sponsor
  - The resources available to the Sponsor and the costs

The resources available to the Sponsor and the costs:

- Translated external Web site
- Methods to provide oral interpretation either in person or via telephone interpretation services and the procedures used by staff to access those services
- Training attended by staff that focused on helping staff better communicate with LEP persons
- Notices detailing the Sponsor's Title VI obligations and complaint procedures that have been translated into languages other than English:
- Notification to Limited English Proficiency customers of the availability of language services
- Monitoring and evaluation of efforts to provide language access

Outreach materials, including public hearing announcements, must be made available in languages understood by the affected population. Public hearings should be held at locations that are both geographically and structurally accessible. Public announcements should indicate that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP; and, if requested, spoken and sign language interpreters and alternately formatted materials will be provided at no cost. NYSDOT maintains LEP maps of New York State which can be used by Sponsors to assist them in identifying the LEP communities in their jurisdiction; and, the languages into which materials must be translated or for which interpreters are needed. For more information concerning NYS LEP maps, contact NYSDOT's Office of Civil Rights at (518) 457-1129.

### **13.6 EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

The Federal aid Highway Act of 1968 [**23 USC 140(a)** and **23 CFR 230**] ensure nondiscrimination in employment on the basis of race, color, creed, or national origin on any federally aided projects. Sponsors are required to include EEO provisions in all their federal aid construction contracts – contained in Form FHWA 1273, *Required Contract Provisions Federal Aid Construction Contracts*, which must be incorporated in the contract proposal. EEO provisions are contained in the EEO section of Appendix 12-1 Construction Contract Proposal Package; the Contract Award process in Chapter 14; and the Contract Administration process in Chapter 15.

For federally aided projects, Sponsors must identify employment goals for each specific contract. These goals are contained in the Special Notes, *Goals for Equal Employment Opportunity Participation*, in the contract proposal. Contractors are required to submit workforce data to Sponsors during the performance of their construction contracts. Employees and work hours must be entered into EBO on a weekly basis. Sponsors shall review EEO reporting and compare to a certified payroll and payroll audit, with the RLPL also monitoring to ensure compliance. EEO goals and attainments are also monitored by both the RLPL and Sponsor.

### **13.7 TRAINING**

Training is one of the Civil Rights activities which may be used to address the under-utilization of minorities, females, and economically disadvantaged persons in highway construction and engineering contracts. Should a Sponsor wish to include a training requirement, it must develop its own provision in accordance with **23 CFR 230.111**; the provision must be reviewed and approved by both NYSDOT and FHWA. Only FHWA-approved On-the-Job Training (OJT) programs or NYS Department of Labor (NYSDOL)/U.S. Department of Labor (USDOL) registered apprenticeship programs may be used to fulfill training requirements. NYSDOL should be contacted for questions about registered apprenticeship programs. The review and approval process is extensive; therefore, appropriate time should be budgeted for the approval process. NYSDOT has online training available upon request. An overview of FHWA's Civil Rights Program for Local Public Agencies including training videos may be found at <http://www.fhwa.dot.gov/federal-aidessentials/index.cfm>.

### **13.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

Title **49 CFR 26.45** requires NYSDOT to submit a programmatic DBE plan to the USDOT. NYSDOT's DBE plan is available at <https://www.dot.ny.gov/main/business-center/civil-rights>. Sponsors must use NYSDOT's approved DBE Program Plan or develop their DBE Program Plan (in accordance with **49 CFR 26.45**) which must be reviewed and approved by both NYSDOT and FHWA. The review and approval process is extensive; therefore, an appropriate amount of time needs to be allocated for review and approval.

Only firms certified through the New York State Unified Certification Program (NYSUCP) as DBEs may be used to fulfill DBE utilization goals set on federal aid contracts. The NYSUCP DBE Directory is the sole resource for identifying DBEs. The Directory is located at <https://nysucp.newnycontracts.com/>. Firms not certified as DBEs can obtain an application for certification from any of the Certifying Partners listed on the Directory's home page. NYSDOT does not pre-qualify nor recommend particular firms for utilization.

### **13.8.1 DBE Contract Requirements / Establishing DBE Plan and Goals**

#### **13.8.1.1 Consultant and Professional Services**

##### **13.8.1.1.1 Architectural & Engineering (A&E) Consultant Contracts**

All A&E consultant contracts should encourage utilization. The Project Manager shall monitor DBE participation as the project progresses. The prime consultant shall report attainment data to the Sponsor each time a payment request is submitted. For consultant selection procedures, see Chapter 6.

##### **13.8.1.1.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts**

For non-A&E contracts such as real estate, legal, accounting, auditing, and public relations, the Sponsor in coordination with the RLPL will determine the DBE goal during the final stages of drafting the Request for Proposals (RFP). This goal is based on the value of the contract, the type of work involved that could be subcontracted, and the availability of DBEs to accomplish the work, as determined by NYSDOT's methodology (see NYSDOT's DBE Program Plan). Attainment data shall be reported by the prime consultant to the Sponsor each time a payment request is submitted using NYSDOT's approved Civil Rights reporting software.

#### **13.8.1.2 Construction Contracts**

NYSDOT's website has established DBE construction contract goals and instructions at <https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21/dmwbe-goals>. The minimum thresholds for DBE goal inclusion is either \$500,000 or \$1,000,000 based on the Engineer's Estimate (EE) and the contract's scope and location. Contracts less than \$500,000 will have a zero DBE goal unless otherwise specified by the Local Programs Bureau. Contractors shall encourage DBE participation on these zero goal projects as described in NYSDOT's Standard Specifications Section 102-12.

#### **13.8.2 DBE Goal Modification Process**

Sponsors may request a modification to DBE goals. A modification can be an increase, reduction, or exemption. Increases might be appropriate for those projects with additional opportunities for DBE participation due to the variety of operations or magnitude of the project. Conversely, a reduction or exemption could be sought for projects with no significant opportunities for DBE participation, perhaps due to being specialized in nature with few pay items. The Sponsor must make a written request to the RLPL prior to contract advertisement, but preferably before contract document review and approval. The Sponsor must include a detailed analysis with calculations and supporting documentation justifying the request on Form C-258 Disadvantaged/Minority/Women's Business Enterprise Goals: Exemption or Reduction in Goal(s) Request. Refer to HDM Chapter 21, *Contract Plans, Specifications, and Estimates*.

The DBE goal modification must be reviewed and approved by both NYSDOT and FHWA. The review and approval process is extensive; therefore, an appropriate amount of time needs to be allocated for review and approval. The revised DBE goal must be included in the project's

advertisement, proposal, and contract (see Chapter 14 for guidance).

### **13.8.3 DBE Goal and Good Faith Efforts (GFE)**

The DBE goal is expressed as a percentage of the total award amount. The goal is stated in the bid proposal and remains in effect throughout the life of the contract. Failure to commit to meeting the established contract goal or to demonstrate Good Faith Efforts (GFE) may be grounds for rejection of the bid. In executing the contract or bid documents, the bidder is declaring acceptance of the goal and shall meet the goal or demonstrate GFE to do so during the Post-Award phase. Further details concerning GFE's can be found in Chapter 14 and the CAM.

### **13.9 PROMPT PAYMENT**

The Sponsor is responsible for ensuring all consultants and contractors comply with the prompt payment contract requirements in **49 CFR 26.29**. These requirements must be included in the Sponsor's contract specifications. The Sponsor is responsible for quality control monitoring of prompt payments using EBO and other means with the RLPL's providing quality assurance monitoring and enforcement.

While **49 CFR 26.29** requires payment to subcontractors within 30 days, New York State and General Municipal Laws are more stringent. Specifically, NYS Finance Law Article 9, Section 139-f, and NYS General Municipal Law, Section 106-b, require prime consultants and contractors to pay their subconsultants/contractors and their various vendors within seven (7) calendar days of receipt of payment from the public owner, e.g., the project Sponsor and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed (see Chapters 6 and 12).

### **13.10 FEDERAL REPORTING REQUIREMENTS**

Consultants and contractors are required to submit data to Sponsors primarily by using NYSDOT's Civil Rights reporting software, i.e., EBO. Sponsors are required to ensure that consultants and contractors submit timely, accurate, and complete data. This will enable NYSDOT to submit timely, accurate, and complete federal reports that include all federally aided contracts in New York State as required by federal regulations. Tables 13-1 and 13-2 in the Appendices summarize the Civil Rights data that consultants and contractors must report to Sponsors. A Sponsor's failure to ensure timely, accurate and complete reporting of Civil Rights data will result in a loss of federal aid. All data must be entered prior to project final acceptance by the Sponsor.

### **13.11 CONTRACT COMPLIANCE REVIEWS**

The Sponsor must conduct Civil Rights monitoring on all federal aid construction contracts. The Sponsor may be directed to perform a comprehensive construction contract compliance review in accordance with **23 CFR 230 Subpart D**. The procedure and forms for the construction contract compliance review process are found in the Contract Administration Manual (CAM), Section 98 and can be accessed at, [https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM\\_Sect98.pdf](https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM_Sect98.pdf).

### **13.12 FINAL REPORTS – CONTRACT CLOSE-OUT**

Sponsors must ensure that all required Civil Rights data is in NYSDOT approved Civil Rights reporting software EBO prior to contract closeout. Failure to ensure timely, accurate, and complete data may jeopardize federal reimbursement and future federal aid.

### **13.13 NON-COMPLIANCE WITH FEDERAL CIVIL RIGHTS REQUIREMENTS**

By signing the State-Local Agreement (SLA), the Sponsor becomes contractually obliged to ensure all Civil Rights laws, rules, regulations, and federal executive orders are adhered to in contracts with its consultants and contractors. Failure by the Sponsor to carry out its responsibilities under, and to comply with, federal civil rights requirements will result in a loss of federal aid by one of the following options: non-reimbursement, administrative disallowance, or, Federal-Aid Ineligibility Notice (FAIN).

## 13.14 REFERENCES

### **Federal Laws and Regulations and Guidance**

23 USC. 140(a) (Nondiscrimination)

23 CFR 200.9(b) (State highway agency responsibilities)

23 CFR 230 (External Federal Highway Programs)

23 CFR 230.111 (Implementation of special requirements for the provision of on-the-job training)

23 CFR 450 (Planning Assistance and Standards)

28 CFR 35.105 (Self-evaluation)

28 CFR 35.150(d)(1)(3)(i-iv) (Existing facilities)

28 CFR 35.151(b)(i) (New Construction and Alterations)

49 CFR 26 (Disadvantaged Business Enterprises, (DBE))

49 CFR 26.45 (How do recipients set overall goals?)

49 CFR 26.29 (What prompt payment mechanisms must recipients have?)

49 CFR 27.7 (Discrimination prohibited)

49 CFR 27.11 (Remedial and voluntary action and compliance planning)

Title VI of the Civil Right Act of 1964

Section 504 of the 1973 Rehabilitation Act

Americans with Disabilities Act of 1990 (ADA)

Presidential Executive Order (EO) 12898 (Environmental Justice)

Presidential Executive Order (EO) 13166 (Limited English Proficiency (LEP))

### **State Laws, Regulations, and Guidance**

NYSDOT Highway Design Manual, Chapter 21

NYSDOT Contract Administration Manual (CAM), Section 98

NYS General Municipal Law, Section 106-b

NYS Finance Law, Article 9, Section 139-f

NYSDOT DBE Plan

NYSDOT LEP Maps

**INSTRUCTIONS - AAF-1911**

- Contract No:** Enter the Sponsor's contract number.  
**PIN:** Enter the Project Identification Number.  
**Project Sponsor:** Enter the name of the Sponsor who released the contract (e.g., Albany County).  
**County(ies):** Enter the name(s) of the county(ies) where the contract is located (e.g., Albany County).  
**Initial:** Place a check mark if this is the Initial schedule for contract award.  
**Amendment:** Place a check mark if this is a schedule amending utilization after contract award.  
**Contractor Name:** Enter the business name for the prime contracting firm.  
**Contractor Fed ID No:** Enter the Federal Identification number associated with the prime contracting firm.  
**Contract Bid Amount:** Enter the contract's low bid amount in US dollars.  
**Contract DBE Goal %:** Enter the DBE goal that is assigned to this contract, expressed as a percentage.  
**Contract DBE Goal \$:** The DBE goal will be expressed in US dollars; *Excel will calculate and fill automatically.*

**UTILIZATION INFORMATION SECTION**

- DBE Name:** Enter the business name for the DBE firm.  
**Fed ID No:** Enter the Federal Identification number associated with the DBE firm.  
**Work Category:** This field has a drop down menu; select one category from the list.  
**WBE Utilization:** Enter the total amount of the work assigned to the DBE in US dollars.  
**Total Commitments:** The DBE total utilization will be expressed in US dollars; *Excel will calculate and fill automatically.*  
**Contract DBE Goal:** The DBE goal will be expressed in US dollars; *Excel will copy from above section and fill automatically.*  
**Difference:** The difference between utilization and the goal expressed in US dollars; *Excel will calculate and fill automatically.*



**DBE UTILIZATION WORKSHEET**

Contract No.	County(ies)	PIN	Project Sponsor	Date Submitted
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CONTRACTOR INFORMATION				
Name				Federal ID No.
Address 1				Address 2
City	State	Zip	Telephone No.	

SUBCONTRACTOR INFORMATION				
Name				Federal ID No.
Address 1				Address 2
City	State	Zip	Telephone No.	
Estimated Beginning Date			Estimated Completion Date	

The Prime Contractor shall inform the Sponsor's Engineer-In-Charge (EIC) of the dates when the Subcontractor starts and completes all work under the subcontract. When the work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and numbers as required of the Prime Contractor. This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Sponsor. The signators below agree that violations of the foregoing may result in no payment by the Sponsor for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal and State Laws and Regulations.

Contractor Signature		Date	Subcontractor Signature		Date	
Item No.	Name	< Less Than 100%	\$ Specialty	\$ Non-Specialty	Agreed Amount \$	% to Count
<b>Totals</b>			\$0.00	\$0.00	\$0.00	

The Subcontractor named above is approved for utilization under the provisions of the Sponsor's contract specifications. Approval of this worksheet conveys only the Sponsor's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goal of the contract. Sponsor approval of form AAPHC 20LL Part 2 is required prior to subletting or otherwise assigning any part of the contract.

Approved For Sponsor By (Name)		Date Approved	
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**APPROVAL TO SUBCONTRACT**

<b>Contract No.</b>	<b>County(ies)</b>	<b>PIN</b>	<b>Project Sponsor</b>	<b>Date Submitted</b>
0	0	0	0	January 0, 1900

CONTRACTOR INFORMATION					
<b>Name</b>	0			<b>Federal ID No.</b>	0
<b>Address 1</b>	0			<b>Address 2</b>	0
<b>City</b>	<b>State</b>	<b>Zip</b>	00000	<b>Telephone No.</b>	-

SUBCONTRACTOR INFORMATION						
<b>Name</b>	0			<b>Federal ID No.</b>	0	
<b>Address 1</b>	0			<b>Address 2</b>	0	
<b>City</b>	<b>State</b>	<b>Zip</b>	00000	<b>Telephone No.</b>	-	
<b>Estimated Beginning Date</b>			1/0/00	<b>Estimated Completion Date</b>		1/0/00

The Prime Contractor shall inform the Sponsor's Engineer-In-Charge (EIC) of the dates when the Subcontractor starts and completes all work under the subcontract. When the work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and numbers as required of the Prime Contractor. This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Sponsor. The signatories below agree that violations of the foregoing may result in no payment by the Sponsor for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal and State Laws and Regulations.

Contractor Signature		Date	Subcontractor Signature		Date
Item No.	Name	< Less Than 100%	\$ Specialty	\$ Non-Specialty	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
0	0	0	\$0.00	\$0.00	
		<b>Totals</b>	\$0.00	\$0.00	

The Subcontractor named above is authorized to perform work on the above noted contract for the items listed herein; however, a subcontract shall be of no force or effect until approved below.

**BELOW FOR PROJECT SPONSOR USE ONLY**

<b>Original Total Contract Price (Less Specialty Items)</b>		<b>% Original Total Contract Price Approved This Date</b>		<b>Approval #</b>
<b>% Original Total Contract Price Previously Approved</b>		<b>% Original Total Contract Price Approved To Date</b>		
<b>Approved For Sponsor By (Name)</b> Nassau County DPW	368 of 417		<b>Date Approved</b>	Contract No. H6035-01G

**INSTRUCTIONS FOR COMPLETING FORM AAP 20LL AND CONR 89LL  
DBE UTILIZATION WORKSHEET AND APPROVAL TO SUBCONTRACT**

The Sponsor's contract specifications require that, prior to contract award, Prime Contractors must obtain written consent of the Sponsor's CEO (or designee) to a utilization plan that identifies certified Disadvantaged Business Enterprises (DBEs) that have committed to perform work on a proposed contract. The DBE Utilization Worksheet (AAP 20LL) is used to describe in item detail the utilization plan for each proposed DBE firm.

The Sponsor's contract specifications require Prime Contractors to obtain written consent of the Sponsor's CEO (or designee) prior to subletting or otherwise assigning any part of the contract. The Approval to Subcontract (CONR 89LL) is used for that purpose.

The DBE Utilization Worksheet and Approval to Subcontract have been designed for use as related forms, AAP 20LL and CONR 89LL. When submitting forms for firms included in the Contractor's Schedule of Utilization, prepare a signed, two part set of both pages, as described below. Entries made on the Utilization Worksheet will automatically provide data for an Approval to Subcontract except that item-level DBE agreed amounts will not be shown on the second page. When submitting forms for firms not included in the Contractor's Utilization Plan, only an Approval to Subcontract is to be completed. All DBE Utilization Worksheets (AAP 20LL) are to be submitted as attachments to the Contractor's Schedule of Utilization, form AAP 19LL.

Approval of the Utilization Worksheet conveys only the Sponsor's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract. THE SPONSOR'S APPROVAL TO SUBCONTRACT IS REQUIRED PRIOR TO SUBLETTING OR OTHERWISE ASSIGNING ANY PART OF THE CONTRACT.

**Both Forms:**

- Contract Number:** Enter contract number
- County(ies):** Enter county or counties in which the project is located
- PIN:** Enter Project Identification Number
- Page No.:** Enter page number of current AAP 20LL/CONR 89LL and total number of forms being submitted
- Project Sponsor:** Enter name of municipality or agency that is letting the project
- Date Submitted:** Enter date completed forms are submitted to the Sponsor. For firms included in the Contractor's Schedule of Utilization, the dates on both pages must agree. If they do not, the request will not be processed.
- Names/Addresses:** Enter all contact information for the Contractor and Subcontractor, including Federal ID number and telephone number with area code
- Signatures & Dates:** Authorized representatives of the Contractor and Subcontractor must sign and date the form(s)
- Est. Beginning Date:** Enter estimated date when Subcontractor will begin work
- Est. Completion Date:** Enter estimated date when Subcontractor will complete work
- Item No. and Name:** Enter each item by Specification number and name. If only part of an item is to be subcontracted, check the "Less Than 100%" box and attach a description of the specific work to be performed to both pages of this form.
- < Less Than 100%:** Place an X if the Subcontractor is performing less than the complete item of work
- \$ Specialty:** If a specialty item per the Specification, enter the dollar amount here
- \$ Non-Specialty:** If a non-specialty item per the Specification, enter the dollar amount here

**AAP 20 LL:**

- Agreed Amount \$:** Enter the amount to be paid to the DBE
- % To Count:** Enter 100% for subcontracting, manufacturing, fabricating, professional or trucking services; 60% for material supply; or, the % fee or commission for brokering

AAAP 391C NYS (08/11)	EMPLOYMENT UTILIZATION REPORT																	
Contract No.	PIN	Contractor	Prime	Sub	Compos	Federal EIN	County	Minority Goal	Female Goal	Date	Final Report?							
0	0					0		0	0									
EMPLOYMENT - THIS REPORTING PERIOD (MONTHLY)																		
Trade	WORK HOURS OF EMPLOYMENT												NUMBER OF EMPLOYEES					
	Total		Black		Hispanic		Asian or Pacific Islander		American Indian or Alaskan Native		Non-Minority		Minority %	Female %	TOTAL		TOTAL MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	%	%	M	F	M	F
Laborers																		
Equipment Operators																		
Surveyors																		
Truck Drivers																		
Ironworkers																		
Carpenters																		
Masons																		
Painters																		
Electricians																		
Others																		
Total Workforce																		
Prepared by:													Project Sponsor		0			
(sign and date)													0		0			
(enter name)													0		0			

**Contractor Report of Contract Payments**

<p align="center"><b>Final Report</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p align="center"><b>PIN</b></p> <hr/> <p align="center"><b>Contract Number</b></p>	<p align="center"><b>County</b></p>	<p align="center"><b>Report Date</b></p>
<p><b>Contractor Name and Address</b></p>		<p><b>Subcontractor/Vendor Name and Address</b></p> <p><input type="checkbox"/> Check if firm is CERTIFIED MWBE</p>	
<p><b>Contractor Federal Identification Number</b></p>		<p><b>Subcontractor/Vendor Federal Identification Number</b></p>	
<p align="center"><b>Total Payments Due to Date:</b></p> <p align="center"><b>- Retainage or Other Withholding to Date:</b></p> <hr/> <p align="center"><b>Total Payments to Date:</b></p>			
<p><b>Project Sponsor Name and Address</b></p>			
<p><b>Comments</b></p>			
<p><b>Certification</b></p>			
<p>Section 139-t of the State Finance Law requires the contractor to pay each of its subcontractors and/or materialmen the proceeds from the payment representing the value of work performed and/or materials furnished by the subcontractor and/or materialmen within 7 calendar days of the receipt of any payment from the public owner.</p>			
<p align="center"><b>FINAL PAYMENT CERTIFICATION</b></p> <p>As an officer of the Contractor identified above, and based on my personal knowledge, I certify that payment has been made by the Contractor to the Subcontractor/Vendor in the amount stated herein pursuant to the last AAP 20LL NYS/CONR 89LL NYSon file with the Project Sponsor and that said work/services/product was performed/supplied by said Subcontractor/Vendor and that there were no rebates, refunds, or offsets applied to any payments except as noted under "Comments" above and a copy of this form has been sent to the Subcontractor/Vendor.</p> <p>Signed: _____</p> <p>Title: _____ (For Contractor)</p>	<p align="center"><b>FINAL PAYMENT CERTIFICATION</b></p> <p>As an officer of the Subcontractor/Vendor identified above, and based on my personal knowledge, I certify that payment has been received in the amount stated herein pursuant to the last AAP 20LL/ NYSCONR 89LL NYSon file with the Project Sponsor and that said work/services/product was performed/supplied and supervised solely by the Subcontractor/Vendor and that there were no rebates, refunds, or offsets applied to any payments except as noted under "Comments" above.</p> <p>Signed: _____</p> <p>Title: _____ (For Subcontractor/Vendor)</p>		
<p><b>Notarization for Final AAP 21LL NYS</b></p>			
<p>Sworn to me this _____ Sworn to</p> <p>Day of _____ Day of</p> <p align="center">_____ Notary Public Notary Public</p>	<p>me this _____</p> <p>_____</p> <p>_____</p>		
<p>If this report is verified by an oath administered by a Notary Public in a foreign country other than Canada, it must be accompanied by a certificate authenticating the authority of the Notary who administered the oath.</p>			
<p>Any person who makes a false or fraudulent statement in connection with participation of a MWBE on any assisted program or otherwise violated applicable State and/or Federal statutes may be referred for prosecution under applicable State and/or Federal law.</p>			

Note to Subcontractor: If the Contractor has not paid your firm for the work completed and accepted by the Project Sponsor in accordance with the terms specified on this form, please contact the Engineer for the contract.

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## AAP 21LLNYS Form Instructions:

**Subcontractor/Vendor:** Is defined as any subcontractor, materialmen, supplier or service provider with an AAP 20LLNYS / CONR 89LL on file for the contract.

**Final Report:** Check YES or NO, as appropriate, to indicate whether this will be the Final Report submitted for this vendor.

**Contract No:** Enter NYSDOT PIN (Project Identification Number) and Local Project contract number.

**County:** Enter the name of the county or counties this project is located in.

**Report Date:** Enter date (Month/Day/Year) through which payments due and made are reflective of.

**Contractor and Vendor Data:** Enter names, and addresses (including zip code), Telephone numbers (including area codes) and Federal Identification Numbers for both the Contractor and Vendor.

**Total Payments Due to Date:** Enter total of payments due to the Vendor to date.

**Retainage or Other Withholding to Date:** Enter amount due Vendor that has not been paid due to retainage or other withholding.

**Total Payment to Date:** Value of payments due to date less retainage or other withholding.

**Comments:** Amounts recorded as retainage or other withholding must be accompanied by a brief description of the circumstances necessitating the withholding along with item numbers involved (if any).

**Signatures:** Authorized representative of the Contractor must sign and date.

**Signatures on Final Report:** An authorized representative of both the Contractor and Vendor must sign and date.

**Notarization:** On the Final Report, or when directed by the Project Sponsor, Contractor and Vendor signatures must be notarized.

The AAP 21LL NYS is a cumulative to-date report of the total payments due a Vendor, total retainage or other withholdings, and total payments made to the Vendor. The AAP 21LL NYS is to be submitted by the fifteenth day of the month to the Project Sponsor, or when requested by that entity. The dollar values on this report should be accurate through the last day of the previous month. The Final AAP 21LL NYS must be signed and notarized by both parties. The Final AAP 21LL NYS should be submitted as soon as possible after the Vendor has completed/supplied all of the work/service/products for which it was utilized, but not later than 30 days after the Vendor has completed its commitment.

An AAP 21LL NYS is required for each Vendor due payment on the project.

The Contractor shall submit a copy of the AAP 21LL NYS, signed by an authorized representative of their firm, to the Project Sponsor and to each Vendor due payment on the project.

The Contractor shall inform the vendor of its responsibility to review the form for accuracy and to have the Vendor's signature on the Final AAP 21LL NYS notarized.

This report is a written instrument within the meaning of Section 175.00 of the Penal law. I am fully aware that it will be filed with the Project Sponsor and become a part of the records thereof, and that entering any false information hereon constitutes the crime of Offering a False instrument for filing in the first degree, which is a Class E Felony (Penal Law, Section 175.35).

Nassau County DPW

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Merrick Road Over Milburn Creek-PIN 0761.37  
Contract No. H63029-10G

## To Be Completed by Low Bidder

Regardless of the status of the CCA-2 questionnaire from the Lowest Bidder with the NY State Contract Management Bureau, provide a copy of Attachment(s) A and B to NYSDOT Regional Local Projects Construction Monitor for the files and their review as part of the contract award package.

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

You have selected the For-Profit Construction questionnaire, commonly known as the "CCA-2," which may be printed and completed in this format or, **for your convenience, may be completed online using the New York State VendRep System.**

**COMPLETION & CERTIFICATION**

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

**NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)**

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us) or call 866-370-4672.

**DEFINITIONS**

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

**RESPONSES**

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

BUSINESS ENTITY INFORMATION				
Legal Business Name		EIN		
Address of the Principal Place of Business (street, city, state, zip code)		New York State Vendor Identification Number		
		Telephone	Fax	
		ext.		
		Website		
Authorized Contact for this Questionnaire				
Name		Telephone	Fax	
		ext.		
Title		Email		
Additional Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS		
1.0 Business Entity Type – Check appropriate box and provide additional information:		
a) <input type="checkbox"/> Corporation (including PC)	Date of Incorporation	
b) <input type="checkbox"/> Limited Liability Company (LLC or PLLC)	Date Organized	
c) <input type="checkbox"/> Limited Liability Partnership	Date of Registration	
d) <input type="checkbox"/> Limited Partnership	Date Established	
e) <input type="checkbox"/> General Partnership	Date Established	County (if formed in NYS)
f) <input type="checkbox"/> Sole Proprietor	How many years in business?	
g) <input type="checkbox"/> Other	Date Established	
If Other, explain:		
1.1 Was the Business Entity formed in New York State?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," indicate jurisdiction where the Business Entity was formed:		
<input type="checkbox"/> United States	State	
<input type="checkbox"/> Other	Country	

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>			<input type="checkbox"/> Not Required
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .			<input type="checkbox"/> Yes <input type="checkbox"/> No
1.5 If the <u>Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>			<input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," check all that apply:			
<input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE)			
<input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE)			
<input type="checkbox"/> New York State <u>Small Business</u>			
<input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a <u>Business Entity Official</u> ; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i>			
<u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

<b>II. AFFILIATE and JOINT VENTURE RELATIONSHIPS</b>		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction</u> -related <u>Joint Ventures</u> within the past three (3) years? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

<b>III. CONTRACT HISTORY</b>	
3.0 Has the <u>Business Entity</u> completed any <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list the ten most recent <u>construction</u> contracts the <u>Business Entity</u> has completed using Attachment A – Completed Construction Contracts, found at <a href="http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc">www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc</a>. If less than ten, include most recent subcontracts on projects up to that number.</i>	
3.1 Does the <u>Business Entity</u> currently have uncompleted <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list all current uncompleted <u>construction</u> contracts by using Attachment B – Uncompleted Construction Contracts, found at <a href="http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc">www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc</a>. Note: Ongoing projects must be included.</i>	

<b>IV. INTEGRITY – CONTRACT BIDDING</b>	
<i>Within the past five (5) years, has the <u>Business Entity</u>, an affiliate, or any predecessor company or entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Had any bid rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a proposed subcontract rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Had a low bid rejected on a <u>government contract</u> for failure to make <u>good faith efforts</u> on any <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or <u>Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.6 Initiated a request to withdraw a bid submitted to a <u>government entity</u> or made any claim of an error on a bid submitted to a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>	

<b>V. INTEGRITY – CONTRACT AWARD</b>	
<i>Within the past five (5) years, has the <u>Business Entity</u>, an affiliate, or any predecessor company or entity:</i>	
5.0 Defaulted on or been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement, consent decree or stipulation settlement as specified by, or agreed to with, any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Had its surety called upon to complete any contract whether government or private sector?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.4 Forfeited all or part of a standby letter of credit in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

<b>V. INTEGRITY – CONTRACT AWARD</b>	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
<i>For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>	

<b>VI. CERTIFICATIONS/LICENSES</b>	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>	

<b>VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS</b>	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of:	
(i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or	<input type="checkbox"/> Yes <input type="checkbox"/> No
(ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Had a New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

<b>VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS</b>	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
7.6 Other than previously disclosed, been the subject of any <u>citations</u> , notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of: <ul style="list-style-type: none"> <li>• <u>Federal</u>, state or local health laws, rules or regulations;</li> <li>• <u>Federal</u>, state or local environmental laws, rules or regulations;</li> <li>• Unemployment insurance or workers compensation coverage or <u>claim</u> requirements;</li> <li>• Any labor law or regulation, which was deemed willful;</li> <li>• Employee Retirement Income Security Act (ERISA);</li> <li>• <u>Federal</u>, state or local human rights laws;</li> <li>• <u>Federal</u>, state or local security laws?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i></p> <p><i>Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.</i></p>	

<b>VIII. LEADERSHIP INTEGRITY</b>	
<i>If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.</i>	
<i>Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:</i>	
8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 The subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: <ul style="list-style-type: none"> <li>(i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or</li> <li>(ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p><i>For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i></p>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

<b>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>		
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>		
9.4 What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project	b. Aggregate (All Projects)	
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year ) Gross Sales	2nd Year (Indicate year ) Gross Sales	3rd Year (Indicate year ) Gross Sales
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year ) Amount	2nd Year (Indicate year ) Amount	3rd Year (Indicate year ) Amount
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at <a href="http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls">www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls</a> . (This information must be attached.)		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

Yes  No

*Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.*

*If "Yes," indicate the question number(s) and explain the basis for the claim.*

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_;

\_\_\_\_\_  
Notary Public

Vendor Name:

NYS Vendor ID:

**Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:**

1.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
2.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
3.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
4.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
5.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable

Vendor Name:

NYS Vendor ID:

**Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:**

6.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
7.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
8.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
9.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
10.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable

Vendor Name:

NYS Vendor ID:

**Question 3.1: List all current uncompleted construction contracts:**

1.	Agency/Owner	Award Date	Completion Date
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable
			EIN of JV, if applicable
		Total Contract Amount	Amount Sublet to others
			Uncompleted Amount
2.	Agency/Owner	Award Date	Completion Date
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable
			EIN of JV, if applicable
		Total Contract Amount	Amount Sublet to others
			Uncompleted Amount
3.	Agency/Owner	Award Date	Completion Date
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable
			EIN of JV, if applicable
		Total Contract Amount	Amount Sublet to others
			Uncompleted Amount
4.	Agency/Owner	Award Date	Completion Date
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable
			EIN of JV, if applicable
		Total Contract Amount	Amount Sublet to others
			Uncompleted Amount



**APPENDIX 2**

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Transportation (NYSDOT) may approve a request for Assignment of Contract

During the term of the Contract, should NYSDOT receive information that a person is in violation of the aboverespected certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

**APPENDIX 2-S**

By entering into a renewal or extension of this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor understands that during the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after

the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any renewal, extension or request for assignment for an entity that appears on the prohibited entities list hereafter and to pursue a responsibility review with respect to any entity that is granted a contract extension/renewal or assignment and appears on the prohibited entities list thereafter.

**APPENDIX 2-S**

By entering into a renewal or extension of this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor understands that during the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after

the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any renewal, extension or request for assignment for an entity that appears on the prohibited entities list hereafter and to pursue a responsibility review with respect to any entity that is granted a contract extension/days or assignment and appears on the prohibited entities list thereafter.

# PLAFAP MANUAL

## CHAPTER 14

# ADVERTISEMENT, CONTRACT LETTING AND AWARD

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**NOTE: This Chapter has associated appendices and forms that can be found on the Procedures for Locally Administered Federal Aid Projects (PLAFAP) manual website at: [www.dot.ny.gov/plafap](http://www.dot.ny.gov/plafap)**

**14.1 INTRODUCTION**

This chapter describes the various phases of the contracting process including: soliciting of bidders (advertising), bid opening, bid analysis identification of the lowest bidder, and contract award and documentation for locally administered federal aid transportation construction contracts. The Sponsor must have an approved *Construction Management Plan* (CMP) prior to contract award, appropriately revised to reflect project staffing and be signed by the NYSDOT Regional Local Project Liaison (RLPL), or appropriate designee (See section 12.2.2).

The following federal regulations apply:

- **Advertising for bids and proposals** (23 CFR 635.112);
- **Method of Construction** (23 CFR 635.104);
- **Participation by Disadvantaged Business Enterprises in US Department of Transportation Financial Assistance Programs** (49 CFR 26); and

- **Equal Employment Opportunity (EEO) on Federal and Federal-Aid Construction Contracts (Including Supportive Services) (23 CFR 230)**

When a discrepancy exists between federal, State and municipal laws, rules and/or regulations, Federal law prevails; with the exception that State and municipal laws, rules and/or regulations may be more strict and therefore have precedence.

## 14.2 ADVERTISING

Advertising for all Federal aid construction contracts must meet federal requirements and foster competitive bidding. When the contract bid documents, including Plans, Specifications and Estimate of quantities (PS&E), have been assembled and the Sponsor receives Federal Authorization to Proceed<sup>1</sup>, the Sponsor is required to advertise the contract for bidding (23 CFR 635.112). The NYS requirement for publicizing the solicitation of bids for a construction contract is that it be advertised (i.e. New York State Contract Reporter, newspaper, etc.) for at least three weeks (15 business days) prior to the opening of the bids. The sponsor is encouraged to place additional advertisements in appropriate publications if desired. Advertising costs should be charged to the construction phase.

The advertisement must identify the Disadvantaged Business Enterprise (DBE) contract goal, if applicable. In the event that a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible.

### 14.2.1 New York State Contract Reporter (NYSCR)

The *New York State Contract Reporter*<sup>2</sup> is an exclusively online publication requiring electronic submission of advertising content. To comply with federal requirements, **all contracts with New York State (including locally administered Federal aid projects) for the procurement of goods and services must be published in the NYSCR**. Contracts to be awarded on a sole source<sup>3</sup> or single source<sup>4</sup> basis must also be published and have prior approval from Main

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<sup>1</sup> The Sponsor could forfeit Federal reimbursement if the advertisement of a contract takes place prior to receiving a Notification to Proceed. <sup>2</sup>

<http://www.nyscr.org>

<sup>3</sup> *Sole source* is a situation in which only one contractor can supply the goods or services. Office Local Programs Bureau. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered prior to submitting advertisements and may do so from the NYSCR website<sup>5</sup>.

Once a Sponsor is granted access, they will receive a password and instructions for ad submission. The system can accept bid specification documents in Word, Excel, Power Point or PDF formats as attachments (up to 50 MB) to be published with the advertisement. When an advertisement is successfully submitted, an ad number is assigned by the system and the municipality is notified of the particular issue in which it will appear, along with other details. A confirmation page showing these details can be printed. Additionally, the NYSCR can capture and provide in an Excel format, registered users who viewed, bookmarked, opened bid documents, or opted to receive bid update notifications for the advertisement, including their

contact information. All information exchanges with the Contract Reporter (email confirmations, downloaded spreadsheets, screen captures of advertisements, etc.) should be printed and kept in the project file.

The NYSCR is published weekdays and new solicitations appear every morning. Any advertisement submitted successfully to the NYSCR system on a given day appears the following business day. Advertisements submitted Friday, Saturday or Sunday appear on Monday, as long it is not a major holiday.

The earliest bid due date allowed in the ad insertion form shall be 15 business days, or 21 calendar days after the advertisement is published. The insertion date, publication date and earliest due date can be calculated in the Publication Calculator Tool on the web site. If an earlier bid due date becomes necessary, the municipality must get approval from the RLPL, along with help from the NYSCR, which can be sought through the *Contact Us* link<sup>6</sup>.

Any questions or requests for assistance can be made online through the *Contact Us* link or by calling Empire State Development, Procurement Assistance Services/NYSCR at (518) 2925266.

### 14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, but prior to the opening of bids. **There shall be a process to ensure all plan holders and NYSDOT receive amendments when issued.** This can be accomplished by either having bidders acknowledge amendments in their bid submittals or by distributing amendments by certified mail. The following should be considered when a Sponsor is contemplating amending a contract:

- If significant changes to the scope and/or scale are necessary, **the Sponsor should seek advisement from the RLPL (changes may require FHWA approval).** If the changes are not allowed to be incorporated by amendment the Sponsor should cancel the contract, redesign the project and then re-let it.
- An amendment should be issued when either of the following errors are discovered:
  - a. Any contract pay item quantity change of  $\pm 20\%$ .

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<sup>4</sup> *Single source* is when two or more contractors can supply the goods or services, but one is selected over the others because of distinguishable expertise, previous experience with similar contracts, etc. <sup>5</sup> <https://www.nyscr.ny.gov/register.cfm> <sup>6</sup> <https://www.nyscr.ny.gov/contactUs.cfm>

- b. Any contract pay item quantity change, multiplied by the estimated unit price (or change in a lump sum item), which alters the total engineer's estimate by more than  $\pm 1\%$ .
- c. DBE goal incorrectly stated in the contract.
- d. EEO goal incorrectly stated in the contract.

### 14.4 BID LETTING AND BID ANALYSIS

In accordance with 23 CFR 635.113(a), *"All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid*

aloud shall be publicly announced at the letting.” If the proposal includes alternate bidding procedures, the contract budget and alternate bidding award procedures must be declared prior to opening bids and the announcement of the apparent low bidder (see Section 12.5.9). After all bid totals have been read aloud, the apparent low bidder will be announced, and all bidders informed that award will be pending a complete bid analysis including mathematical verification and affirmation that the low bidder is responsible. The Bid Analysis shall be concluded and Contract Award shall be made within 45 days as noted in §140 of the State Finance Law.

Negotiation with a low bidder (i.e. adjusting quantities, changing unit prices, adding and subtracting work, etc.) prior to contract award is prohibited [23 CFR 635.113(a)].

#### **14.4.1 Bidder Responsibility**

For all Federal aid contracts, determination of whether or not a business entity is a ‘responsible bidder’ is made using the guidelines established by NYS Governor’s Executive Order #170, whereby a contractor/vendor may be deemed ‘not responsible’.

The following must be verified as part of the bidder responsibility review:

- For all contracts the *New York State Uniform Contracting Questionnaire (CCA-2)* is used in the qualification of an entity as a “responsible bidder.”
- United States General Services Administration’s List of Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid<sup>7</sup>.
- NYS Department of Labor’s monthly List of Employers Ineligible to Bid on or be Awarded any Public Work Contract<sup>8</sup>.
- NYS Department of State’s Corporation/Business Entity Database<sup>9</sup> to ensure that Corporations, Professional Corporations, Limited Liability Companies and Limited Liability Partnerships have proper authority to conduct business in New York State.
- Office of Safety and Health Administration (OSHA) website for safety violations for a given firm<sup>10</sup>.

The NYSDOT Contract Pre-Award Unit is responsible for reviewing and approving the CCA-2 questionnaire. After the low bidder is determined, the Sponsor should contact the RLPL as soon as possible to see if a CCA-2 is on file for the bidder. If not, a questionnaire shall be

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<sup>7</sup> <https://www.sam.gov/portal/SAM/##11>

<sup>8</sup> <https://dbr.labor.state.ny.us/EDList/searchPage.do#>

<sup>9</sup> <http://www.dos.ny.gov/corps/> <sup>10</sup> <http://www.osha.gov/pls/imis/establishment.html>

completed by the low bidder and submitted to the Contract Management Bureau as instructed. A copy of the CCA-2 questionnaire is on NYSDOT’s website.<sup>1</sup> Similar checks must be conducted on subcontractors (see Chapter 15). RLPLs should access the “Letting and Awards System” (LAS) database in order to confirm that a vendor has an approved CCA-2 on file.

<sup>1</sup> <https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info>

#### **14.4.2 Bid Analysis**

The Sponsor must conduct a bid analysis to ensure that the apparent low bid is responsible and reasonable and that the contract award will best promote the public interest. A bid analysis generally consists of a comparative review with the Engineer's Estimate to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid.

The following steps must be performed for each contract as part of the bid analysis:

1. Review the bid items that are 25% over or under the Engineer's Estimate and look for potential errors.

A significant difference between the Engineer's Estimate and the total contract or item bid price by the Low Bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may provide an indication of market conditions and competition relative to an individual project. A low total contract bid price by a bidder relative to other bidders closer to the Engineer's Estimate may suggest a misinterpretation of the bid documents by the Low Bidder; or simply that the Low Bidder has limited work and is bidding work closer to cost.

Evaluate items with high bid costs to determine if there is an omission or error in the plans or specifications. If something unusual is found, review the quantity to determine if there is a possibility there is an error in the quantity or in the unit price used in the Engineer's Estimate. If the item appears to be in question, contact the Project Designer/Engineer of Record.

Evaluate high bid items where the quantity is relatively small, the item may be a low productivity item and may therefore cost more than a typical weighted average or estimated price. The item should be compared with the other bidder's prices and if it still seems unusual, further analysis is necessary.

Note circumstances where quantity changes could affect the ranking of the bidders if corrections/changes are made to the quantities. If post award changes are anticipated that would change the ranking of the bidders, it should be recommended that all bids be rejected.

2. Evaluate bids with significant variations from the Engineer's Estimate, among the bidders, or where obvious unbalancing of the unit prices has occurred. In addition to the 25% differential, as noted in Step 1, review the items having the largest dollar amount differential for jobs with overall bids 15% higher or lower than the Engineer's Estimate. Include in the review, the analysis of the B portion of an A+B Contract when the difference is more than 50%. For contracts with multiple B time periods, evaluate any B time period that is more than 50% below the Engineer's Estimate (For more information regarding A+B Bidding please refer to §101-02 of the NYS Standard Specifications.).

Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obvious unbalanced bid prices are

all for items which will occur at the beginning of the contract, and the Contractor defaulted, the Sponsor may be in a difficult position to recover payments made.)

Base the analysis on verification of quantities, discussions with the Low Bidder, whether the general location of the contract is convenient for the Low Bidder, and whether the apparent Low Bidder will ultimately yield the lowest cost. Also note that unrepresentative pricing affects cash flow and performance incentives. Any discussion with the low bidder during procurement is subject to New York State Procurement Guidelines<sup>2</sup>, as stated in Article 11 of the New York State Finance Law. Negotiations with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted per 23 CFR 635.113(a). Any discussions should be factual in nature without discussion of the other bids or the Sponsor's contract award intentions. Contacting the low bidder should not be a routine practice.

If the low bidder cannot provide justification for the unbalanced item(s), the contract should be considered for rejection. It may be very difficult to justify the removal of the low bidder with a recommendation to award to the second bidder if items are not significantly unbalanced. Once an award recommendation is reached, detailed justification must be provided to the RLPL. Though the bid may not be desirable, it may be acceptable.

When the Sponsor has some objection to the Low Bidder, or needs more time to evaluate qualifications of the Low Bidder, the RLPL must be notified as soon as possible of the objection with a summary of the justifiable reasons. The RLPL will then notify the NYSDOT MO-Local Programs Bureau ([MO-LocalProgramsBureau@dot.ny.gov](mailto:MO-LocalProgramsBureau@dot.ny.gov)). If the Sponsor has concerns with a Low Bidder, documentation supporting the concerns should be readily available if requested by NYSDOT.

#### **14.4.3 Reasonableness Justification**

The Office of the State Comptroller (OSC) requires a reasonableness justification when the apparent low bid is more than 15% higher or lower than the Engineers Estimate. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineers Estimate for specific items and should discuss the apparent reasons such differences exist and any inherent risks. Where lower, the justification should focus on the experience of the Low Bidder and its ability to complete the contract according to NYS Governor's Executive Order #170. If it is determined that changes to the Engineer's Estimate would be appropriate based on bid analysis findings, provide descriptions of the revisions to prices for each item that is revised, and a revised total of the Engineer's Estimate. All revision descriptions must include dollar amounts and not general statements.

A reasonableness justification shall include all of the following:

1. Consider the structural assessment review performed by the structural designer, if applicable. Provide justification if the determination does not coincide with the "recommendation to award" by the structural designer.

<sup>2</sup> <http://ogs.ny.gov/bu/pc/Docs/Guidelines.pdf>

2. Determine whether the contract can be divided into smaller segments or stages of construction, combined with work in a larger contract, or if there are changes in the contract requirements that can be made to reduce the cost of work or produce more competition.
3. Determine whether a contract is essential and whether the delay resulting from cancelling and re-letting would not be in the best public interest. Contracts considered essential include, but are not necessarily limited to safety contracts, which are to correct hazardous conditions to the traveling public, emergency repairs or replacement of damaged facilities.
4. Determine whether a timely award is required in order to complete staged construction, order materials, coordinate with and to allow other contracts (including other governmental and private contracts) to proceed, meet commitments made by the Sponsor, or to complete a facility in its entirety.
5. Determine if a delay would result in a substantial impact on the contract completion date or extend the contract beyond the contract completion date, over the winter and into the next construction season, thereby increasing the contract cost.
6. Determine whether the general location of the contract is saturated with similar types of construction contracts, thus tending to reduce competition.
7. Determine whether a shortage of construction labor, equipment or specialty capability and experience exists in the contract area, resulting in a general increase in bid prices.
8. Make a recommendation as to whether or not to award the contract.

#### **14.4.4 Single Bid Analysis**

For all contracts where only one bid has been received, the Sponsor should ascertain the potential for increased bidding if the contract were rebid, by examining the list of plan buyers for other potential bidders. Potential bidders should be contacted for their reasons for not bidding. On the basis of such discussion, determine whether revisions to the contract requirements could result in lower bids through increased competition or clarification of ambiguities. The Sponsor should determine whether the contract is essential and the potential for increased bidding if this contract were to be rebid.

#### **14.4.5 Rejection of All Bids**

It may be necessary to reject all bids. Reasons to reject all bids include inadequate competition due to limited number of bidders, high bids due to unclear requirements, or other circumstances that affected the bids received. For example, contracts where additional costs could not be justified, adequate competition was not received (e.g. not enough bids), permits not received, etc. Discussion should include reasons why the Sponsor believes that they will receive better bids if the contract is re-let, or what changes will be made to secure more competitive bid prices like the bidding environment or time of the year when the job will be let. If after consultation with NYSDOT, all bids are rejected by the Sponsor, the Sponsor must notify **all bidders**.

#### 14.4.6 Bidder Error

Occasionally a bidder will inadvertently err so severely that it is not reasonable to expect contract fulfillment. §103(11) of the General Municipal Law ("Advertising for bids; letting of contracts; criminal conspiracies") sets forth requirements to excuse a bidder for an error in bidding and to proceed to the next lowest responsible bidder:

*Bid mistake; public projects. (a) In all contracts governed by this section, where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer or subdivision in status quo ante. (b) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the awarding officer, board or agency may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.*

#### 14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract's DBE utilization. There are three distinct stages of DBE utilization: goals, commitments, and attainments. Goals are established prior to letting in the contract documents as a percentage of the contract bid price. After contract letting, the contract goal is expressed as a dollar amount. During the pre-award process, the Contractor and the proposed DBEs agree to dollar amount commitments. After contract award, attainments are measured after completion of the work in dollars paid to certified DBEs. In order to comply with Federal aid Civil Rights requirements, NYSDOT utilizes the Civil Rights monitoring and reporting software, Equitable Business Opportunities Solutions (EBO). It is the Sponsor's responsibility during Pre-Award to confirm that the low bidder has committed to meeting the DBE participation goal, or has demonstrated good faith efforts to do so. If the apparent low bidder has not met the goal, review of good faith efforts and concurrence from the RLPL and NYSDOT's Main Office (MO) Local Programs Bureau is required<sup>3</sup>.

Sponsors should note that in accordance with NYSDOT Standard Specifications §105-21 (Civil Rights Monitoring and Reporting), the Contractor must submit timely, accurate and complete data using EBO.

<sup>3</sup> [https://www.dot.ny.gov/main/business-center/contractors/construction-division/constructionrepository/Bidders Civil Rights PreAward Guide.pdf](https://www.dot.ny.gov/main/business-center/contractors/construction-division/constructionrepository/Bidders%20Civil%20Rights%20PreAward%20Guide.pdf)

#### 14.5.1 The Equitable Business Opportunity Solution (EBO)

**Project entry into EBO is required during pre-award once the low bidder has been identified.** The following steps are to be completed **before** award of the contract:

1. After the identification of the low bidder, the Sponsor will immediately submit the "Contract Template" (contract's items, quantities, low bid prices and apparent low bidder information) to the RLPL, utilizing the "FA Contract Information Template"<sup>4</sup> and confirm the correct Units of Measure for a seamless upload into the Civil Rights reporting software, EBO.
2. The RLPL will perform a Quality Assurance check on the Template and submit for upload to Main Office Local Programs Bureau. If there are errors, the RLPL will return the template to the Sponsor for correction.
3. The Sponsor will notify the low bidder that the contract has been initialized in EBO.
4. The low bidder must enter their complete DBE utilization package in EBO within 7 calendar days from the date of the **bid opening**, or risk having their bid declared nonresponsive. Beginning January 1, 2017, the requirement will be 5 calendar days.
5. The Sponsor and RLPL must review the pre-award utilization data in EBO to confirm that the DBE goal is met. When the pre-award utilization package is incomplete or fails to meet goals, the sponsor should send a letter to the contractor requesting complete documentation with a deadline of no more than 5 business days.
6. If the DBE goal is not met, then the low bidder must provide documentation of Good Faith Efforts (GFE), and submit it to the Sponsor, who in turn will submit simultaneously to the RLPL, and NYSDOT's Main Office Local Programs Bureau ([localprograms.ebo@dot.ny.gov](mailto:localprograms.ebo@dot.ny.gov)) for review as detailed in section 14.5.2 titled "Good Faith Efforts (GFE)."

The pre-award utilization data in EBO must be reviewed for completeness and accuracy:

- All proposed DBEs are listed in the New York State Unified Certification Program (UCP) Directory located at: <https://nysucp.newnycontracts.com/>.
- All proposed DBEs are listed in the UCP Directory to perform the work that they are being proposed to perform (NOTE: If NYSDOT work codes do not match the contract pay items, or if they are not being used, or if there are no NYSDOT codes in the DBE's Directory listing, the NAICS codes should be reviewed against the proposed work).
- All proposed DBE utilization is identified with the correct work type such as construction, material supplier, professional services, etc.
- All proposed trucking utilization is supported by trucking data entered into EBO.
- A completed AAP22LL DBE Material Supplier Commitment Information form is submitted for each proposed DBE material supplier as part of the award package.
- A completed AAP23LL DBE Trucking Commitment Information form is submitted for each proposed DBE trucking firm as part of the award package; these forms are located at: <https://www.dot.ny.gov/main/business->

<sup>4</sup> <https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federalaid-projects/civil-rights>

[center/contractors/constructiondivision/forms-manuals-computer-applications-general-information/civil-rights.](#)

- All partial items are explained in writing and submitted to RLPL.
- All proposed DBEs acknowledged their respective proposed utilization in EBO.

In the event that the DBE goal was not achieved during pre-award, the low bidder conducted complete, adequate, sincere, results-oriented Good Faith Efforts to achieve it.

#### **14.5.2 Good Faith Efforts (GFE)**

If the low bidder does not meet the DBE goal, the low bidder must document that it conducted adequate Good Faith Efforts (GFE) to achieve the goal. This means that the low bidder must show that it took all necessary and reasonable steps which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful.

Once the low bidder has supplied the GFE documentation, the Sponsor will forward copies, and any other additional information, to the RLPL and NYSDOT's Main Office Local Programs Bureau for a simultaneous review. Once the Sponsor's review is complete, they will submit a request for concurrence to award. Once NYSDOT concurs, the Sponsor shall approve the preaward DBE utilization in EBO and will proceed with its award process.

**The Sponsor shall not award until concurrence is received from NYSDOT.** Awarding the contract without NYSDOT review and concurrence may result in a loss of Federal aid.

Supporting documentation includes, but is not limited to, the following:

- *Form AAP-10LL D/M/WBE Subcontractor & Supplier Solicitation Log (See Contract Administration Manual 102-12A<sup>5</sup>)*
- Copies of correspondence, faxes and e-mails sent to prospective DBEs
- Copies of advertisements (e.g., newspaper ads)
- Copies of quotes from non-selected DBEs as well as quotes from the selected nonDBEs

The Sponsor should analyze/present data in a spreadsheet or chart format. At a minimum, the Sponsor should perform the following analysis for GFE:

- ⑤ Check the DBE certification status of each firm contacted.
  - ③ If the firm cannot be found in the UCP Directory, confirm the certification status with the certifying agency responsible for the firm. Never accept copies, faxes, or scans of certification letters.
- ⑤ Compare the work in the contract against:
  - ③ Work for which DBEs were solicited
  - ③ Work that the DBEs are listed to perform
- ⑤ Compare the location of each DBE firm to ensure an exhaustive search was performed for each item, within an appropriate radius of the project in accordance with NYSDOT Standard Specification §102-12(G).

<sup>5</sup> [https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manualscomputer-applications-general-information/murk\\_1a](https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manualscomputer-applications-general-information/murk_1a)

- ⑤ Identify available utilization opportunities and compare them against the type of worksolicited.
- ⑤ Ensure all types of DBE firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
- ⑤ Cross-reference letters, faxes, AAP-10LL, etc. ⑤ Compare the DBE's price against:
  - ③ Engineer's Estimate
  - ③ Bid price
  - ③ Weighted Average Item Price Report data<sup>6</sup> ⑤ Where does the DBE's price fall in comparison to all of the above? ⑤ Contact a sample of the firms listed on the AAP-10LL to verify solicitation effort stated in the solicitation log and other documents.
    - ③ When contacted
    - ③ By whom
    - ③ By what method(s)
    - ③ How many times
    - ③ For what work
    - ③ Was quote/bid submitted
    - ③ Were plans provided/made available – how and when
    - ③ Low bidder's follow through ⑤ Compare all efforts against Appendix A to 49 CFR 26<sup>17</sup>.

If the Sponsor determines that the low bidder did not conduct adequate GFE, it should present its recommendation with this analysis and supporting documentation to its management as well as to the RLPL in a narrative which should include:

- ⑤ State the specific non-compliance actions ⑤ Cite the specification and regulation for each non-compliance action or class of actions ⑤ Provide calculations of the amount achieved toward the DBE goal and the difference ⑤ Provide an analysis of the feasibility of the DBE goal ⑤ Provide a timeline or chronology of events ⑤ Calculations of the difference between the first and second low bidders ⑤ Any other relevant information

The Sponsor must follow its administrative process and document its steps and actions. If it is determined that the low bidder did not conduct adequate GFE, the Sponsor may disqualify the low bidder and request concurrence to award to the second low bidder who has successfully met the DBE goal or has submitted sufficient GFE.

The DBE goal is in effect for the duration of the contract. If the DBE goal is not met at the time of award then the Sponsor must ensure Good Faith Efforts are made throughout the life of the contract. The contractor will be required to continue to solicit DBE firms for participation on the contract and document those efforts. The Sponsor will continue collecting the additional GFE documentation from the contractor throughout the duration of the contract, or until the DBE goal is met.

#### 14.6 BRIDGE CONSTRUCTION UNIT COST DATA (if applicable)

<sup>6</sup> <https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr>

<sup>17</sup> <http://www.gpo.gov/fdsys/granule/CFR-2009-title49-vol1/CFR-2009-title49-vol1-part26-appA>

Annually, all states are required to submit to FHWA bridge construction unit costs for all new and replacement bridges constructed using any federal funds. The FHWA requirement does not pertain to bridge rehabilitations and superstructure replacements.

The Sponsor must provide to the RLPL an itemized bridge share of the construction costs (as submitted by the successful bidder). A separate itemized share is required for each bridge, and only bridge items shall be included. The Engineer's Estimate as well as other bidder's unit costs should not be included. This data must be provided to NYSDOT when the contract is awarded.

The Bridge Construction Unit Cost Data sheet (see Appendix 14-3 for a sample), along with half-size contract plan sheets (bridge plan view, elevations and sections), must be provided to the RLPL, who forwards them to the NYSDOT Structures Design Quality Assurance Bureau.

#### **14.7 AWARD PACKAGE**

NYSDOT, as the supervising agency, is responsible for the construction of all Federal-aid projects. When the project is not on the NHS or State Highway System, NYSDOT is not relieved of overall project responsibility<sup>18</sup>, thus the Sponsor must submit a Contract Award Package to the RLPL requesting a Concurrence in Award letter.

The following items are to be included in the Contract Award Package (see Appendix 14-4 for the Contract Award Checklist):

- Proof of Advertising (See section 14.2 – “Advertising”)
- ROW Clearance Certification
- Regulatory Agency, Utility, or RR Permit Status
- Copy of all amendments issued
  - Amendments distribution records showing that all amendments were sent to all plan buyers
- Plan holders list for any contract that received less than three bids
- Memorandum of Bids Sheet (Appendix 14-2)
- Bid Opening, Verification and Sponsor Recommendation Sheet (Appendix 14-1) with mathematical certification attached
- Copy of notarized and signed proposal of the verified apparent low bidder (See section 12.6), including:
  - Copy of certificate of insurances/bond/bid deposit
  - Non-Collusive Bidding Certification
  - Debarment History Certification
  - Disclosure of lobbying activities
- Certification of apparent Low Bidder Responsibility (See section 14.4.1 – “Bidder Responsibility”).
- Bid analysis completed by Sponsor.
- A description from the Sponsor concerning how it intends to inspect and provide QA/QC, as noted in the approved CMP.
- Bridge Construction Unit Cost Data (required for all projects with new or replacement bridges, regardless of the category of highway system) (Appendix 14-3).
- Documentation demonstrating that the low bidder met their responsibility for DBE participation when goals were established. See NYSDOT Contract Administration Manual (CAM) §102-12 and Chapter 13 titled “Civil Rights Requirements”.
- Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) participation (AAP53)
- DBE participation – EBO utilized and DBEs have acknowledged work. Concurrence of DBE participation by the RLPL prior to award.

23 CFR 635.105

- GFE documentation, if the DBE goal is not met - Sponsor **cannot award** the contract until NYSDOT's MO Local Program Bureau concurs with the GFE.
- DBE trucking information in EBO if trucking is utilized.
- DBE Material Supplier Commitment Information (AAP22LL), if DBE material suppliers are utilized.
- DBE Trucking Commitment Information form (AAP23LL), if DBE trucking firms are utilized
- Identification of Affirmative Action Representatives in EBO (Not required for suppliers).

Sponsors must submit the Award Package, as well as the FA Contract Information Template for upload and review into EBO, prior to award, in order for the RLPL to conduct their review. RLPL will review both items and issue Concurrence in Award letter when all questions and comments have been addressed.

Please note that all projects that do not meet the DBE goals will have to provide GFE documentation to be reviewed and approved by NYSDOT MO Local Programs Bureau.

#### **14.8 CONTRACT AWARD**

Federal aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with "Licensing and qualification of contractors" [23 CFR 635.114(a)]. Award shall be made within 45 days as noted in §140 of the State Finance Law.

The Sponsor must certify in writing that all items in the award documentation package have been addressed and request a Concurrence in Award letter. In support of the Sponsor's request, the Sponsor must summarize the results of their bid analysis and highlight any irregularities that may have been identified. The summary must include the bid tabulations of the project, showing bid item details for at least the low three acceptable bids and the total amounts of all other acceptable bids (see Appendix 14-2). After receiving the Concurrence in Award letter from the RLPL, the Sponsor may award the contract and schedule a PreConstruction Kick-off meeting.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. Concurrence in award is a prerequisite to federal participation in construction costs and, unless specifically stated otherwise, constitutes authority to proceed with construction [23 CFR 635.114(b)]. The Concurrence in Award Letter must be kept as part of the project record by both the Sponsor and the RLPL.

If FHWA has approving authority, the Sponsor will prepare the Locally Administered Federal Aid Project Award Information Letter (Appendix 14-5) summarizing basic information about the project and bidding process and submit to RLPL for submission to the FHWA Division Office.

#### **14.9 REFERENCES**

**Federal Regulations 23 CFR 230**

23 CFR 635.104

23 635.105

23 CFR 635.112

23 CFR 635.113(a)  
23 CFR 635.114(a)  
23 CFR 635.114(b)  
49 CFR 26

**State Laws, Regulations And Guidance**

NYS Finance Law – Section 140  
NYS General Municipal Law, Executive Article 5-A  
NYS General Municipal Law, Section 103, Subdivision 11  
NYS Governor's Executive Order No. 170 NYS Procurement Guidelines  
NYSDOT Contract Administration Manual §102-12  
NYSDOT Standard Specifications §101-02  
NYSDOT Standard Specifications §102-12  
NYSDOT Standard Specifications §105-21

**APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**

*To be included in all contracts*

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

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Code	Briefly describe observations of Work/Materials/Equipment

# Commercially Useful Function (CUF) Monitoring Report

## Project Information

Region  Contract No.:  Prime Contractor:   
DBE Firm's Work Category:  DBE Firm Name:   
Who is completing form?

## DBE Firm's Information - Work

Complete Table A for the DBE Firm's Work Category selected above:  Check this box to see guidance for this Section

Required Documents - save to Site Manager  
Select most recent approval date for each document

AAP-20  Trucking Plan  Supplier Questionnaire

## DBE Firm's Information - Workforce and Supervision

Please answer the following questions as a part of the CUF assessment. Because the choice of DBE Firm's Work Category above determines what questions are required for this assessment, you may not be required to answer all questions. For Questions 1 and 2, Payrolls are for on-site work only. Questions that do not apply to the DBE Firm's Work Category selected will automatically default to "NA".  Check this box to see additional guidance for this Section.

1. Does the Payroll reflect the number of workers, drivers, or trades (as applicable) shown on the DWR?
2. Did any workers appear on the Prime's or other sub-contractor's payroll on this contract?
3. Did the workers, drivers, or trades (as applicable) work for the Prime or other subcontractor (Vendor) on this contract?
4. Did the supervisor manage the day-to-day operations for only the DBE Firm?
5. Did the supervisor work for the Prime or other subcontractor (Vendor) on this contract?

Comments/Field Notes Section

**DBE Firm's Information - Work Products, Materials, and Equipment**

Save Form

Print Form

Send form to:

Please answer the following questions as a part of the CUF assessment. Because the choice of DBE firm's work category determines what questions are required for this assessment, you may not be required to answer all questions. Questions that not apply will automatically default to "NA".

Check this box to see additional guidance for this :

6. Were the Plans and Reports prepared by the DBE firm on this contract?

7. Select the statement that best describes the equipment used by the DBE firm on this contract:

8. Select the statement that best describes the delivery of materials on this contract:

**For Question 9: To select more than one choice, use the shift/click or control/click function to select from the list**

9. Regarding the DBE firm's materials and equipment, select from the list all that apply:

- DBE firm name is on Materials Certification(s).
- Shipping Ticket(s) or Bill(s) of Lading.
- DBE firm name is on Delivery Ticket.
- Equipment used.
- DBE firm name did not appear.
- Not Applicable to this DBE firm's Work Category.

For each selection, attach relevant documentation.

Notes:

**CUF Assessment**

Date of CUF review:   Check this box to see additional guidance for this :

**Based upon an appropriate review of the contract records as well as periodic observations of the DBE Firm named above on contract site, in accordance with the provisions of CFR 49 Part 26 Section 55 (c)(1), the NYS DOT Specifications and Standard the Contract Administration Manual (CAM) Section 105, it is found that: (Check One)**

Nothing calls into question that the DBE named above has performed a Commercially Useful Function (CUF) on this Contract.

There are indicators that the DBE named above has not performed a Commercially Useful Function (CUF) on this Contract as evidenced by the following:

Brief Explanation of Finding:

Actions Taken: (e.g. notified Compliance Officer)

Name(s) & Title(s) of Person(s) who performed the assessment:  Date:

Once completed, submit the form to the Compliance Officer assigned to the contract.