

FOR INFORMATIONAL PURPOSES ONLY - DO NOT USE TO SUBMIT A BID

BID SCHEDULE OF PRICES

H63029-26G

REHABILITATION OF BANNISTER CREEK BRIDGE

VILLAGE OF LAWRENCE, NASSAU COUNTY, NY

BIN 5520290 PIN 0762.06

Nassau County DPW

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H63029-26G PIN 0762.06
Rehab Bannister Creek Bridge

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
201.06	LS	1	CLEARING AND GRUBBING FOR _____				
203.02	CY	1,055	UNCLASSIFIED EXCAVATION AND DISPOSAL FOR _____				
203.02000001	CY	90	UNCLASSIFIED EXCAVATION AND DISPOSAL, OTHER LOCATIONS FOR _____				
203.06	CY	430	SELECT FILL FOR _____				
203.07	CY	806	SELECT GRANULAR FILL FOR _____				
206.01	CY	17	STRUCTURE EXCAVATION FOR _____				
206.0201	CY	62	TRENCH AND CULVERT EXCAVATION FOR _____				
206.05	EA	5	TEST PIT EXCAVATION FOR _____				
207.20	SY	125	GEOTEXTILE BEDDING FOR _____				
209.11010024	EA	7	TEMPORARY CATCH BASIN INSERT - TRASH, SEDIMENT, AND DEBRIS REMOVAL FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
209.1501	LF	853	TURBIDITY CURTAIN - TEMPORARY FOR _____				
304.10119917	CY	96	SUBBASE COURSE, TYPE 1011-2 FOR _____				
404.0189	TN	75	TRUE & LEVELING F9, ASPHALT, 80 SERIES COMPACTION FOR _____				
404.0981	TN	539	9.5 F1 TOP COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
404.1989	TN	298	19 F9 BINDER COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
404.2589	TN	191	25 F9 BINDER COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
404.3789	TN	24	37.5 F9 BASE COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
407.0102	GAL	1,033	DILUTED TACK COAT FOR _____				
418.7603	LF	1,460	ASPHALT PAVEMENT JOINT ADHESIVE FOR _____				
490.30	SY	2,880	MISCELLANEOUS COLD MILLING OF BITUMINOUS CONCRETE FOR _____				
520.05000010	LF	28	SAW CUTTING PCC AND COMPOSITE PAVEMENT FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
520.09000010	LF	1,008	SAW CUTTING ASPHALT CONCRETE FOR _____				
552.13	SF	9,216	TEMPORARY STEEL SHEETING FOR _____				
552.17	SF	8,582	SHIELDS AND SHORING FOR _____				
553.020001	LS	1	COFFERDAMS (TYPE 2) FOR _____				
555.80020001	LF	676	CRACK REPAIR BY EPOXY INJECTION (RESTORATION) FOR _____				
557.1011	SY	600	STRUCTURAL APPROACH SLAB WITH INTEGRAL WEARING SURFACE- TYPE 1 FRICTION FOR _____				
558.02	SY	600	LONGITUDINAL SAWCUT GROOVING OF STRUCTURAL SLAB SURFACE FOR _____				
559.04	SF	22,761	PROTECTIVE SEALING OF CONCRETE WITH COATING TYPE PROTECTIVE SEALER FOR _____				
564.510001	LB	9,487	STRUCTURAL STEEL FOR _____				
567.64000116	LF	226	REPLACE COMPRESSION MATERIAL FOR EXISTING BRIDGE JOINT ITEM FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
568.51	LF	68	STEEL BRIDGE RAILING (FOUR RAIL) FOR _____				
568.70	LF	136	TRANSITION BRIDGE RAILING FOR _____				
570.01	LS	1	LEAD EXPOSURE CONTROL PLAN FOR _____				
570.02	DC	3,000	MEDICAL TESTING FOR _____	\$1	.00	\$3,000	.00
570.03	DC	400	PERSONAL EXPOSURE MONITORING SAMPLE ANALYSIS FOR _____	\$1	.00	\$400	.00
570.04	CW	2	DECONTAMINATION FACILITIES FOR _____				
570.090001	LS	1	ENVIRONMENTAL GROUND PROTECTION FOR _____				
570.100001	LS	1	ENVIRONMENTAL WATERWAY PROTECTION FOR _____				
570.160001	LS	1	CLASS B CONTAINMENT FOR PAINT REMOVAL FOR _____				
571.03	LB	4,100	DISPOSAL OF HAZARDOUS PAINT WASTE CONTAINING LEAD FOR _____				
579.02	SF	30	REINFORCING BAR EXPOSURE FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
580.01	CY	7	REMOVAL OF STRUCTURAL CONCRETE FOR _____				
581.01	SF	5,880	REMOVAL OF BITUMINOUS CONCRETE OVERLAY (BRIDGE) FOR _____				
582.0051	CY	25	REMOVAL AND REPLACEMENT OF STRUCTURAL CONCRETE FOR _____				
582.0061	SF	1,161	REMOVAL OF STRUCTURAL CONCRETE - REPLACEMENT WITH VERTICAL AND OVERHEAD PATCHING MATERIAL FOR _____				
586.0201	EA	218	DRILLING AND GROUTING BOLTS OR REINFORCEMENT BARS FOR _____				
587.01	LF	65	BRIDGE RAILING REMOVAL AND DISPOSAL FOR _____				
595.50000018	SF	475	SHEET-APPLIED WATERPROOFING MEMBRANE FOR _____				
603.6102	LF	18	REINFORCED CONCRETE PIPE CLASS IV, 15 INCH DIAMETER FOR _____				
603.6103	LF	411	REINFORCED CONCRETE PIPE CLASS IV, 18 INCH DIAMETER FOR _____				
604.07260011	EA	5	CONNECTION TO EXISTING DRAINAGE FACILITIES FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
604.501012	LF	20	SPECIAL DRAINAGE STRUCTURE (TYPE A CATCH BASIN - 48") FOR _____				
604.501014	LF	8	SPECIAL DRAINAGE STRUCTURE (TYPE A CATCH BASIN - 72") FOR _____				
604.501022	LF	10	SPECIAL DRAINAGE STRUCTURE (MANHOLE - 48") FOR _____				
606.10	LF	341	BOX BEAM GUIDE RAILING FOR _____				
606.100002	LF	9	BOX BEAM GUIDE RAILING (SHOP BENT OR SHOP MITERED) FOR _____				
606.120101	EA	2	BOX BEAM END PIECE FOR _____				
606.120201	EA	2	BOX BEAM GUIDE RAILING END ASSEMBLY, TYPE IIA FOR _____				
606.73	LF	110	REMOVING AND DISPOSING BOX BEAM GUIDE RAILING FOR _____				
607.30020010	LF	141	STEEL CHAIN LINK FENCE WITH TOP RAIL, 6FT HIGH FOR _____				
607.96000008	LF	110	REMOVE AND DISPOSE EXISTING FENCE FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
607.99870011	LF	169	REMOVE EXISTING CHAIN-LINK FENCE FOR _____				
608.0101	CY	11	CONCRETE SIDEWALKS AND DRIVEWAYS FOR _____				
608.01030008	SY	45	REMOVAL AND REPLACEMENT OF CONCRETE SIDEWALK AND SUBBASE COURSE FOR _____				
608.020102	TON	9	HOT MIX ASPHALT (HMA) SIDEWALKS, DRIVEWAYS AND BICYCLE PATHS, AND VEGETATION CONTROL STRIPS FOR _____				
608.21	SY	5	EMBEDDED DETECTABLE WARNING UNITS FOR _____				
609.0401	LF	422	CAST-IN-PLACE CONCRETE CURB TYPE VF6 FOR _____				
609.0407	LF	205	CAST-IN-PLACE CONCRETE CURB TYPE T4 FOR _____				
610.1402	CY	28	TOPSOIL - ROADSIDE FOR _____				
610.1403	CY	18	TOPSOIL - LAWNS FOR _____				
610.1601	SY	378	TURF ESTABLISHMENT - ROADSIDE FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
610.1602	SY	155	TURF ESTABLISHMENT - LAWNS FOR _____				
614.060104	EA	1	TREE REMOVAL OVER 4 INCHES TO 6 INCHES DIAMETER BREAST HEIGHT - STUMPS GRUBBED FOR _____				
619.01	LS	1	BASIC WORK ZONE TRAFFIC CONTROL FOR _____				
619.080101	LF	200	REMOVE PAVEMENT MARKING STRIPES, TRAFFIC PAINT FOR _____				
619.0901	LF	7,640	TEMPORARY PAVEMENT MARKINGS STRIPES (TRAFFIC PAINT) FOR _____				
619.110511	EA	2	(PVMS) STANDARD SIZE - FULL MATRIX (LED) NO OPTIONAL EQUIPMENT SPECIFIED, NO CELLULAR COMMUNICATIONS REQUIRED FOR _____				
619.1716	LF	1,880	TEMPORARY POSITIVE BARRIER - CATEGORY 6 (PINNING REQUIRED) FOR _____				
619.1719	EA	215	WARNING LIGHTS ON TEMPORARY POSITIVE BARRIERS FOR _____				
619.24	LS	1	NIGHTTIME OPERATIONS FOR _____				
619.67020010	LS	1	TEMPORARY LIGHTING SYSTEMS FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
620.04	CY	90	STONE FILLING (MEDIUM) FOR _____				
625.01	LS	1	SURVEY OPERATIONS FOR _____				
633.11	SY	5,711	CLEANING EXISTING PAVEMENT AND/OR SHOULDER FOR _____				
633.12	LS	1	CLEANING, SEALING AND/OR FILLING CRACKS FOR _____				
635.0103	LF	910	CLEANING AND PREPARATION OF PAVEMENT SURFACES - LINES FOR _____				
637.13	MNTH	18	ENGINEER'S FIELD OFFICE - TYPE 3 FOR _____				
637.34	DC	5,000	OFFICE TECHNOLOGY AND SUPPLIES FOR _____	\$1	.00	\$5,000	.00
639.2X00NC	LS	1	CPM (CRITICAL PATH METHOD) SCHEDULE WITH MONTHLY UPDATE (MIN. PER UNIT IS \$100,000.00) FOR _____				
645.5101	SF	5	GROUND-MOUNTED SIGN PANELS WITHOUT Z-BARS FOR _____				
645.5102	SF	45	GROUND-MOUNTED SIGN PANELS LESS THAN OR EQUAL TO 32 SF, WITH Z-BARS FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
645.81	EA	6	TYPE A SIGN POST FOR _____				
647.31	EA	1	RELOCATE SIGN PANEL, SIGN PANEL ASSEMBLY SIZE I (UNDER 30 SQUARE FEET) FOR _____				
647.41	EA	1	REMOVE AND STORE SIGN PANEL, SIGN PANEL ASSEMBLY SIZE I (UNDER 30 SQUARE FEET) FOR _____				
647.61	EA	6	REMOVE AND DISPOSE GROUND MOUNTED TYPE A SIGN SUPPORTS, FOUNDATIONS AND ANY ATTACHED SIGNS - SIZE I (UNDER 30 SF) FOR _____				
655.07030010	EA	2	CAST FRAME F3, WITHOUT CURB BOX AND WITH RETICULINE GRATE G3 FOR _____				
655.0706	EA	2	CAST FRAME F3, UNMOUNTABLE CURB BOX CU3 & RETICULINE GRATE G3 FOR _____				
655.1202	EA	1	MAH HOLE FRAME AND COVER FOR _____				
655.16000011	EA	4	REMOVE AND DISPOSE OF FRAMES AND GRATES FOR _____				
655.25010005	EA	4	FURNISH AND/OR INSTALL INLET ASSEMBLY, AS SPECIFIED FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
670.2003	LF	98	GALVANIZED STEEL CONDUIT, 3" FOR _____				
670.3030	EA	3	PULLBOXES OVER 15 CUBIC FEET, INSIDE VOLUME (LIGHTING) FOR _____				
670.7010	LF	219	SINGLE CONDUCTOR CABLE, 10 GAGE FOR _____				
670.7501	LF	121	GROUND WIRE NO. 6 AWG. FOR _____				
680.83200010	LS	1	LOCATE AND MARKOUT INFORM AND STATE LIGHTING FACILITIES FOR _____				
685.07200110	LF	1,480	WHITE EPOXY REFL'D PVMNT STRIPE,20 MILS(WET NIGHT VISIBILITY SPHERE) FOR _____				
685.07200410	LF	200	WHITE EPOXY REFL'D PVMNT STRIPE (CROSS HATCHING) 20 MILS (WET NIGHT VISIBILITY SPHERE) FOR _____				
685.07200610	LF	730	YELLOW EPOXY REFL'D PVMNT STRIPE, 20 MILS (WET NIGHT VISIBILITY SPHERE) FOR _____				
685.07200710	LF	300	YELLOW EPOXY REFL'D PVMNT STRIPE(CROSS HATCHING)20 MILS (WET NIGHT VISIBILITY SPHERE) FOR _____				

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697.03	DC	400,000	FIELD CHANGE PAYMENT FOR _____	\$1	.00	\$400,000	.00
698.04	DC	10,000	ASPHALT PRICE ADJUSTMENT FOR _____	\$1	.00	\$10,000	.00
698.05	DC	200	FUEL PRICE ADJUSTMENT FOR _____	\$1	.00	\$200	.00
699.040001	LS	1	MOBILIZATION FOR _____				

CONTRACTOR: _____
 ADDRESS: _____
 BY: _____

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PIN 0762.06 - BANNISTER CREEK BRIDGE REHABILITATION - SPECIAL SPECIFICATIONS LIST

No.	Item#	Description	Unit
1	203.02000001	UNCLASSIFIED EXCAVATION AND DISPOSAL, OTHER LOCATIONS	CY
2	209.11010024	TEMPORARY CATCH BASIN INSERT (CBI)	EA
3	304.1011992	SUBBASE COURSE, TYPE 1011-2	CY
4	520.05000001	SAW CUTTING PORTLAND CEMENT CONCRETE AND COMPOSITE PAVEMENTS	LF
5	520.09000001	SAW CUTTING ASPHALT CONCRETE	LF
6	555.80020001	CRACK REPAIR BY EPOXY INJECTION (RESTORATION)	LF
7	567.64000116	REPLACING COMPRESSION SEAL FOR EXISTING BRIDGE JOINTS	LF
8	595.50000018	SHEET-APPLIED WATERPROOFING MEMBRANE	SF
9	604.07260011	CONNECTION TO EXISTING DRAINAGE FACILITIES	EA
10	607.30020010	STEEL CHAIN LINK FENCE WITH TOP RAIL, 6FT HIGH	LF
11	607.96000008	REMOVE AND DISPOSE EXISTING FENCE	LF
12	607.99870011	REMOVE EXISTING CHAIN-LINK FENCE	LF
13	608.01030008	REMOVAL AND REPLACEMENT OF CONCRETE SIDEWALK AND SUBBASE COURSE	SY
14	619.67020010	TEMPORARY LIGHTING SYSTEMS	LS
15	639.2X00NC	CPM (CRITICAL PATH METHOD) SCHEDULE WITH MONTHLY UPDATE	LS
16	655.07030010	CAST FRAME F3, WITHOUT CURB BOX AND WITH RETICULINE GRATE G3	EA
17	655.16000011	REMOVE AND DISPOSE OF FRAMES AND GRATES	EA
18	655.25010005	FURNISH AND/OR INSTALL INLET ASSEMBLY, AS SPECIFIED	EA
19	680.83200010	LOCATE AND MARKOUT INFORM AND STATE LIGHTING FACILITIES	LS
20	685.072XXX10	EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK (WET NIGHT VIS SPHERES)	LF

MINIMUM BID PRICE ITEMS

CERTAIN PAY ITEMS IN THE ITEMIZED PROPOSAL REQUIRE BIDS AT OR ABOVE THE PUBLISHED MINIMUM PRICE. THESE ITEMS AND RESPECTIVE MINIMUM BID PRICES ALLOWED ARE SHOWN BELOW. IF A BID IS ENTERED BELOW THE PUBLISHED MINIMUM PRICE SHOWN, THE AMOUNT BID FOR SUCH ITEM WILL BE RAISED BY THE DEPARTMENT TO THE PUBLISHED MINIMUM PRICE.

ITEM NUMBER	DESCRIPTION	UNIT	MINIMUM UNIT BID PRICE
639.2X00NC	CPM (CRITICAL PATH METHOD) SCHEDULE WITH MONTHLY UPDATE	LS	\$ 100,000.00

ITEM 203.02000001 - UNCLASSIFIED EXCAVATION AND DISPOSAL, OTHER LOCATIONS

All the provisions of Section 203 with respect to Unclassified Excavation and Disposal shall apply. The excavation locations shall be as shown in the contract documents.

11/15/99

ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)

DESCRIPTION:

The work shall consist of furnishing, installing, maintaining (removing, disposal of debris and resetting), replacing (if needed), and disposing (at end of contract) a temporary catch basin insert at the locations indicated in and according to the contract documents, and as directed by the Engineer.

The work shall also consist of removing and storing an existing temporary catch basin insert prior to a catastrophic storm event (e.g., flooding), and reinstalling it after the event at the locations indicated in and according to the contract documents, and as directed by the Engineer.

Acronyms

CBI – Temporary Catch Basin Insert

Temporary removal, storage and reinstallation of temporary catch basin inserts does not include the cost of a new temporary catch basin insert.

MATERIALS:

The following sections of the standard specification shall apply:

Temporary Catch Basin Insert 713-21

CONSTRUCTION DETAILS

The following section of the standard specifications shall apply:

Soil Erosion and Sediment Control 209-3.01

with the following exceptions:

- Torn or punctured geotextile must be replaced (see Maintenance below)
- Sediment deposition removed from the CBI shall be disposed of in accordance with §107-10 E.

Installation: Install the CBI according to manufacturer’s instructions.

Inspection: Using the most restrictive inspection criteria listed below, the Contractor shall inspect each CBI:

- daily,
- after a rainfall event of 0.5” or more per twenty-four (24) hour period,
- as per manufacturer’s instructions, and
- as per the conditions of the Stormwater Pollution Prevention Plan (SWPPP) (if the contract includes one).

Maintenance: Maintenance shall include the following:

- Removal of all accumulated sediment and debris from the vicinity of the CBI after each rainfall event of 0.5” or more per twenty-four (24) hour period and prior to removal of the insert for maintenance.
- Removal of CBI according to manufacturer’s instructions.

ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)

- Emptying the CBI when the CBI's containment area is more than one third (1/3) full or before the sediment/trash/debris reaches the overflow openings. The Contractor shall ensure that the CBI is not so full that removing it causes the geotextile to rip, tear or become non-functioning. CBIs damaged during sediment removal shall be replaced at the Contractor's expense. The Engineer will determine if a damaged CBI warrants replacement. Sediment and/or debris that has been released into the drainage structure shall be removed by the Contractor and disposed of as below.
 - Refer to the manufacturer's instructions for emptying and re-installing the CBI. Removal of trash, sediment and debris from the CBI shall be done in a manner that ensures no trash, sediment or debris will enter an unprotected drainage structure.
- Disposal of the removed sediment shall occur at an upland location away from all stormwater conveyances.
 - Trash shall be disposed of according to §107-10 E. of the standard specifications.
- If a CBI's fabric or strap is torn,
 - dispose of the sediment and debris contained within the unit according to this specification, and
 - replace the entire CBI. A CBI shall be replaced at no additional cost to the state.
- When CBI servicing results in a non-functioning or poorly functioning CBI, the CBI shall be replaced at no additional cost to the state. The Engineer will determine if a CBI is non-functioning or poorly functioning.
- CBIs shall be removed prior to winter shut down. Re-installation of the CBIs shall occur prior to ground disturbance or first thaw in the following spring, whichever occurs first, and according to manufacturer's instructions.

Emergency Removal, Storage and Reinstallation: Emergency removal, storage and reinstallation shall be performed in association with catastrophic events (e.g. storms and flooding) as follows:

- As directed in consideration of forecasted events (e.g. moderate or major flood warnings) in impacted urban or residential locations where flooding is likely to result in hazardous public conditions.
- Removal, storage, and reinstallation as specified and applicable under Maintenance above. This includes replacing any damaged, poorly functioning, or non-functioning CBI.
- CBIs removed for emergency flooding events shall be reinstalled prior to resuming construction.

CBIs shall be removed according to §209-3.01 and disposed of according to §107-01 E. after all soil disturbance areas have been fully stabilized with an established, permanent, and approved vegetative cover at a uniform density of eighty percent (80%).

METHOD OF MEASUREMENT

Temporary Catch Basin Insert. The work will be measured as the number of each CBI furnished, installed, maintained, replaced, and disposed.

Temporary Catch Basin Insert Emergency Removal and Reinstallation. The work will be measured as the number of each CBI removed, stored, and reinstalled.

ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)

BASIS OF PAYMENT

Temporary Catch Basin Insert. The unit price bid for each CBI furnished, installed, maintained, replaced, and disposed shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Temporary Catch Basin Insert Emergency Removal and Reinstallation. The unit price bid for each CBI removed, stored, and reinstalled shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Progress payments will be made at fifty percent (50%) of the unit price bid upon installation of each CBI. The remaining fifty percent (50%) will be paid after soil disturbance areas have been fully stabilized with an established, permanent, and approved vegetative cover at a uniform density of eighty percent (80%) and the CBI has been removed. No progress payments are offered for the emergency removal and reinstallation of CBI.

Payment will be made under:

Item Number	Description	Unit
209.11010024	Temporary Catch Basin Insert – Trash, Sediment, and Debris Removal	EA
209.11020024	Temporary Catch Basin Insert –Trash, Sediment and Debris Removal, plus Oil and Hydrocarbon Removal	EA
209.11030024	Oil and Hydrocarbon Absorbent Pouches for Temporary Catch Basin Insert	EA
209.11040024	Temporary Removal, Storage and Reinstallation of a Temporary Catch Basin Insert	EA

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

ITEM 520.05000010 - SAW CUTTING PORTLAND CEMENT CONCRETE AND COMPOSITE PAVEMENTS

DESCRIPTION. This work shall consist of saw cutting existing reinforced or unreinforced portland cement concrete, including portland cement concrete pavement and sidewalk, and composite pavement (asphalt concrete on reinforced or unreinforced portland cement concrete), at the locations indicated on the plans or where directed by the Engineer.

MATERIALS. All equipment proposed for this work shall be subject to approval by the Engineer prior to actual use. Rotary rock saws shall not be used for cuts under this item.

CONSTRUCTION DETAILS. Saw cutting shall be along a neat line as indicated on the plans or where directed by the Engineer. The cuts shall be neat and true with no shatter. Saw cuts shall be made to the depth (s) indicated on the plans and as stated below.

When removing composite pavement the Contractor shall saw cut the existing pavement for the full depth of the concrete pavement. The total saw cut depth will be more, depending on the thickness of the asphalt. At the Contractor's option, the asphalt concrete may first be saw cut and removed before making a second cut through the portland cement concrete.

Any damage to material not indicated for removal, caused by the Contractor's operations, shall be repaired by the Contractor. All repair shall be done in a manner satisfactory to the Engineer.

METHOD OF MEASUREMENT. This work will be measured by the number of linear feet of saw cutting done. No allowance will be made for saw cuts of different depths.

Saw cutting which is done for the Contractor's convenience will not be measured for payment under this item.

BASIS OF PAYMENT. The unit price bid per linear foot of saw cutting shall include the cost of all labor, materials, and equipment necessary to complete the work.

Only one payment will be made for saw cutting when removing composite pavement regardless of the method chosen. The cost of saw cutting the asphalt concrete in the composite pavement is included in this item. No payment will be made for this saw cutting under the item for saw cutting asphalt concrete.

Any repairs made necessary by the Contractor's operations shall be done to the satisfaction of the Engineer at no additional cost to the State

ITEM 520.09000010 - SAW CUTTING ASPHALT CONCRETE

DESCRIPTION. This work shall consist of saw cutting existing asphalt concrete pavement or sidewalk at the locations indicated on the plans or where directed by the Engineer.

MATERIALS. All equipment proposed for this work shall be approved by the Engineer prior to actual use.

CONSTRUCTION DETAILS. Saw cutting shall be along a neat line as indicated on the plans or where directed by the Engineer. Saw cuts shall be made to the depth(s) indicated on the plans.

Any damage to material not indicated for removal, caused by the Contractor's operations shall be repaired by the Contractor. All repair shall be done in a manner satisfactory to the Engineer.

METHOD OF MEASUREMENT. This work will be measured by the number of linear feet of saw cutting done. No allowances will be made for saw cuts of different depths.

No saw cutting will be measured for payment under this item which the Contractor may choose to do for his own convenience.

BASIS OF PAYMENT. The unit price bid per linear foot of saw cutting shall include the cost of all labor, materials, and equipment necessary to complete the work.

Any repairs made necessary by the Contractor's operations shall be done to the satisfaction of the Engineer at no additional cost to the State.

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ITEM 555.80010001 - CRACK SEALING BY EPOXY INJECTION (PREVENTION)

ITEM 555.80020001 - CRACK REPAIR BY EPOXY INJECTION (RESTORATION)

DESCRIPTION: Install injection ports, seal the crack opening, inject the crack with epoxy (full depth for restoration work, or as deep as conditions allow for prevention work), and restore the sealed surface to a flush condition in areas visible to the public. Perform the work at locations indicated on the contract plans or where directed by the Engineer.

PREVENTION - use in contaminated, cracked concrete areas to prevent movement and protect reinforcing.

RESTORATION - use in uncontaminated cracked concrete areas to restore structural integrity. Take verification cores for payment. Have an experienced epoxy manufacturer representative present until the work is acceptable to the Engineer.

MATERIAL REQUIREMENTS:

1. Crack Sealant - epoxy paste that completely cures in 4 hours or less and retains the injected epoxy. Any other type of crack sealant is subject to a project demonstration and approval by the Engineer.
2. Low Viscosity Injection Epoxy - Manufacturer certified to meet ASTM C881, Type I or IV, Grade 1, Class B or C (as temperature conditions require.)
3. Vertical & Overhead Patching Material (Approved List) - (for ITEM 555.80020001) §701-08

INJECTION EQUIPMENT: Use equipment in good working order, as approved by the Engineer, with the following features:

- Separate feed lines to the mixing chamber
- Automatic mixing and metering pump
- Ability to thoroughly mix the epoxy components in the mixing chamber
- Operator control of the epoxy flow from the mixing chamber
- Clean, legible, accurate pressure gauges easily viewable by the operator
- Ability to provide an uninterrupted pressure head to continually force epoxy into the cracks
- Injection pressure from 0 to at least 200 PSI
- Capable of metering each epoxy component to within 3.0% of the epoxy manufacturer's mix ratio

Un-reacted epoxy components may be stored overnight in separate reservoirs and feed lines.

Before starting the work, demonstrate to the Engineer the ability of the equipment to meter and mix epoxy components to the required mix ratio. Ratio accuracy may be determined by simultaneously metering each component into separate, clean, accurately graduated, volumetric containers, or another procedure approved by the Engineer. Also, activate the automatic mixing and metering pump, mix a small amount of injection epoxy, and waste it into a disposable container. The Engineer will observe this trial operation and be satisfied the equipment is working properly, and the epoxy is mixed with no streaks.

CONSTRUCTION DETAILS:

ITEM 555.80010001 - CRACK SEALING BY EPOXY INJECTION (PREVENTION)
ITEM 555.80020001 - CRACK REPAIR BY EPOXY INJECTION (RESTORATION)

1. Crack and Surface Preparation. Remove all debris or contaminants accessible within the cracks by using hand tools, water blasting or oil-free high pressure air blasting, vacuuming, or other methods suitable to the Engineer. Epoxy resin will not penetrate: compacted, water or oil soaked debris. Allow free moisture within the crack to be absorbed before injecting epoxy. Remove all materials, including moisture, from the surface adjacent to the crack which might interfere with bonding of the crack sealant.
2. Injection Port Installation. Attach injection ports to the prepared surface by placing them onto (surface adapters) or into the cracks (socket ports) and affixing with crack sealant. Larger cracks may be ported by inserting an anchored tube into the crack.

Use positive connection port designs to connect injection equipment to the ports. Other injection port designs and attachment methods, where worker fatigue would not be a problem, require approval by the Engineer.

Use the following general guidelines for spacing injection ports when cracks are uniform in width through the structure. For cracks that get tighter with depth, double this spacing. Intermediate ports may be placed for observation. To permit maximum flow into the void, position ports on the wider crack sections and at intersections, rather than at an exact spacing.

If these guidelines cannot be followed, use port locations approved by the Engineer. Port spacing may be modified by the Engineer as experience is gained, or when cores are taken to determine penetration.

FOR CRACKS COMPLETELY THROUGH A MEMBER

- A. Cracks accessible from one side - space the ports not less than the thickness of the member.
- B. Cracks accessible from both sides - space the ports not less than twice the thickness of the member and stagger them relative to the ports on the opposite side. Make the stagger between ports (on opposite sides of the member) at least the thickness of the member.

Place the endmost ports at the ends of the crack so as to insure complete filling of the crack.

FOR MULTIPLE CRACKS ALL OVER A MEMBER.

Space the ports as far apart as practical, but not less than 8" from one another. An 8" spacing presumes a 4" penetration in each direction, if the adjacent ports are not plugged when epoxy reaches them. For fine cracks that taper to an end, place the endmost ports about 4" from the end.

3. Crack Seal. After port installation, seal the crack opening with crack sealant, being careful not to plug the injection ports. Allow the crack sealant to cure completely before injecting epoxy.

Apply crack sealant only when surface and ambient temperatures are above 50° F.

ITEM 555.80010001 - CRACK SEALING BY EPOXY INJECTION (PREVENTION)

ITEM 555.80020001 - CRACK REPAIR BY EPOXY INJECTION (RESTORATION)

4. Port Flushing. Prior to any epoxy injection, flush critical ports with oil-free compressed air to verify that air exits from all the installed ports, dry the cracks, and check for leaks.
5. Epoxy Injection. Perform epoxy injection only when the surface and ambient temperatures are above 45° F and are not expected to fall below 45° F during the next 24 hours.

UNIFORM WIDTH CRACKS - start toward the middle of a horizontal crack and work outward, or the lowest point of a sloping or vertical crack and work upward.

VARIABLE WIDTH CRACKS - start at the widest points of all types of cracks and work outward. Secure the feed line to the first port. Initiate and continue flow until epoxy exits from the adjacent port. (Plug observation ports and continue through the same port to achieve maximum penetration.) Temporarily stop the injection process, remove the feed line, and seal the port. Attach the feed line to the adjacent port and repeat this procedure along the crack until the last port is sealed.

Generally, use higher pressures when injecting narrow deep cracks, medium to low for wider cracks, and lowest pressures when injecting a delaminated area or an area susceptible to lifting. Low pressure applied for a longer duration is often more effective than high pressure applied for a shorter duration.

Replenish the epoxy supply in the mixing equipment before it is exhausted. Thoroughly stir each epoxy component both before and after adding it to its respective component in the mixing equipment. Exercise care to assure a continuous injection operation.

Allow the epoxy to fully cure prior to performing subsequent work in the repaired area.

In the event of leakage from a crack, stop the injection process until the leak is sealed. When any work stoppage exceeds 15 minutes, clean the mixing chamber and flush the line that carries mixed epoxy. Flush with a suitable solvent, followed by air.

6. For ITEM 555.80020001 CRACK REPAIR BY EPOXY INJECTION (RESTORATION), take cores ranging in diameter from 1 to 4", as approved by the Engineer, to verify full penetration by epoxy and its cure. Take a representative core from each structural element, or one from every 100 feet of crack repaired, whichever is greater, at locations approved by the Engineer. The Engineer will retain the cores and determine if they are acceptable for payment. Patch the holes with Vertical & Overhead Patching Material.

More than one core may be necessary to obtain an acceptable sample from cracks that diverge below the surface. (To avoid cutting reinforcing, the core drill may be angled to intercept a crack behind the reinforcing.)

7. Clean Up. In all areas visible to the public, as determined by the Engineer, remove spillage, the ports and crack sealant until flush with the adjacent surface. Remove stains and repair any damage to the satisfaction of the Engineer at no additional cost.

ITEM 555.80010001 - CRACK SEALING BY EPOXY INJECTION (PREVENTION)
ITEM 555.80020001 - CRACK REPAIR BY EPOXY INJECTION (RESTORATION)

METHOD OF MEASUREMENT: The Engineer will measure the work as the number of linear feet of crack sealed or repaired, as specified.

BASIS OF PAYMENT: Include the cost of all labor, materials, and equipment necessary to complete the work in the unit price bid per linear foot. For ITEM 555.80020001 CRACK REPAIR BY EPOXY INJECTION (RESTORATION), also include the cost of coring and repairing the core holes.

For ITEM 555.80010001 CRACK SEALING BY EPOXY INJECTION (PREVENTION), the Engineer will authorize payment after the measured length of crack has been sealed and the surface cleaned.

For ITEM 555.80020001 CRACK REPAIR BY EPOXY INJECTION (RESTORATION), the Engineer will authorize payment after the measured length of crack has been repaired as verified by cores, the core holes patched and the surface cleaned.

ITEM 567.64nnnn16 - REPLACING COMPRESSION SEAL FOR EXISTING BRIDGE JOINTS

DESCRIPTION:

The Contractor shall furnish and install compression seals of the size and at the locations indicated on the plans or ordered by the engineer.

MATERIAL:

The requirements of Section 567-2.02 A, 1 and A, 6 shall apply.

CONSTRUCTION DETAILS:

a. Contractor shall remove the existing sealer. Armored surfaces which are to be coated with adhesive shall be cleaned in accordance with SSPC-SP6 and the cleaned surfaces will be defined by SSPC-Vis 1, Pictorial references ASP-6, BSP-6, CSP-6 or DSP-6.

b. Sealant Application:

Two copies of the sealant manufacturer's printed instructions shall be delivered to the Engineer at least two weeks prior to the start of work.

1. Prior to the application of sealant, all surfaces which will come in contact with sealant shall be completely dried and cleaned. Sealant shall be applied in accordance with the manufacturer's printed instructions.

2. The Contractor shall use extreme care in applying the sealant so as not to smear the adjacent concrete surfaces, and he shall immediately clean concrete surface of sealant in the event some of it is dropped or smeared on them.

c. Installation of the joint sealer to be done in accordance with the manufacturer's written instructions.

d. Watertight Integrity Test:

After the compression seal is permanently installed, a watertight integrity test shall be performed. The test shall be done in accordance with the requirements of subsection 567-3.01H.

METHOD OF MEASUREMENT:

Measurement will be made as the number of feet of compression seal completely installed, measured horizontally and vertically along the centerline of joint system between the outer limits as indicated on the contract plans.

The word "completely installed" shall be interpreted to mean the compression seal in its proper position

ITEM 567.64nnnn16 M - REPLACING COMPRESSION SEAL FOR EXISTING BRIDGE JOINTS

and the watertight integrity tests completed.

BASIS OF PAYMENT:

The unit price bid per foot shall include all labor, materials and equipment necessary to complete the work.

Note: "nnnn" denotes a serialized pay item. See § 101-02 Definitions of Terms under "Specifications" and the Standard Drawings.

ITEM 595.50000018 – SHEET-APPLIED WATERPROOFING MEMBRANE

DESCRIPTION

Furnish and install a manually or machine-applied sheet waterproofing membrane in accordance with the contract documents. Include all surface preparation.

MATERIALS

Use a sheet-applied waterproofing membrane meeting the requirements of §717-02.

CONSTRUCTION DETAILS

General - On new structural concrete, the provisions of §557-3.11, Curing, shall be met prior to membrane system placement. Work will not be done during wet-weather conditions. No work will be done when the concrete structural slab surface temperature is below 50°F, or ambient temperatures are below 50°F. The concrete structural slab shall be surface dry at the time of application of the membrane. The Engineer will verify that atmospheric conditions are favorable for placement of the system based on the manufacturer's recommendations.

Arrange for the membrane manufacturer to have a competent technical representative at the job site during all phases of preparation and installation.

Supply Material Safety Data Sheets (MSDS) and approved Material Detail Sheets prepared by the membrane manufacturer to the Engineer a minimum of two (2) weeks prior to the scheduled commencement of work. The Material Detail Sheets will contain all material requirements and installation information for each specific waterproofing membrane. The Material Detail Sheets will be accessible at the Department's Approved List website for reference.

(Bridge Decks) – Begin work no less than (7) calendar days after placement of Portland cement concrete, Portland cement mortar, or epoxy mortar for structural concrete repair. The Engineer may waive the seven-day requirement if the areas of repair can sustain loads without damage or deformation. Subject to the concurrence of the Engineer, if an alternate concrete repair material is used, follow the manufacturer's instructions for allowable loading.

(Culverts) - Fill the joints between precast culvert sections flush to the culvert slab and sidewall surfaces with a grout conforming to §701-08 Vertical and Overhead Patching Material. In areas where the joints do not line up evenly, taper the grout with a maximum slope of 2:1, from the high side of the joint to the low side, to provide a smooth transition from one unit to the next.

Place the waterproofing membrane over the joints of precast or cast-in-place units following the guidelines of Chapter 19 of the Highway Design Manual, or as indicated on the contract plans and Material Detail Sheets.

1. On vertical surfaces, the waterproofing membrane will be covered with material conforming to §705-07 Premoulded Resilient Joint Filler.
2. On horizontal surfaces.

ITEM 595.50000018 – SHEET-APPLIED WATERPROOFING MEMBRANE

Membrane Protection (Culverts) – To protect the waterproofing membrane from punctures, the following procedures will be used:

- a. If select granular fill is specified over the culvert, a 6 inch thick protective layer of concrete sand, meeting the requirements of §703-07 Concrete Sand, will be placed on the membrane.

Or

- b. If asphalt pavement using aggregate larger than 3/8 inch is specified directly above the membrane, or if clearances don't allow for 6 inches of concrete sand, a 1 inch thick (minimum) course of HMA with a maximum nominal aggregate size of 3/8 inch will be placed on top of the membrane. The hot mix asphalt will be thoroughly compacted with mechanical tampers.

METHOD OF MEASUREMENT

This work will be measured as the number of square feet of sheet-applied, waterproofing membrane satisfactorily installed (measured to the nearest 1 sq ft.). No separate measurement of the vertical faces of curbs, joints, concrete barriers, headers, scuppers, or for the inside surfaces of subdrainage outlets, shall be made. No deductions will be made for holes less than 1 square foot in area.

BASIS OF PAYMENT

The unit price bid per square foot for this item shall include the cost of furnishing all labor, materials, and equipment necessary to complete the work.

No additional payments will be made for any re-priming done in conformance with the requirements of the manufacturer's detail sheets.

ITEM 604.07260011 – CONNECTION TO EXISTING DRAINAGE FACILITIES

Description:

Under this item, the Contractor shall remove portions of existing drainage facilities and connect new drainage facilities thereto at the locations shown on the plans as ordered by the Engineer.

Materials:

Concrete	Class A Section 501
Concrete Grouting Material	Section 701-05
Bar Reinforcement	Grade 60 Section 709-01

Construction Details:

The work under this item provides for connecting new pipe lines to existing pipe lines or structures. The Contractor shall maintain the existing pipe lines and structures in continuous service as required and/or directed by the Engineer.

The Contractor shall perform all excavation and backfill and dispose of all excess materials as required to complete the work. Backfilling shall be compacted in conformance with Section 203 of the Standard Specifications.

When connecting to the existing pipe line or structures, the existing facility shall be broken into and reinforcement cut back only as needed to accommodate the new pipe as indicated on the plans. The new pipe shall be set to required grade and the existing pipe wall shall be repaired and patched as required to provide a secure and waterproof connection. Ends of the new pipe projecting into the existing drainage facility shall be neatly cut off and trimmed flush with the inside face of the structure.

Method of Measurement:

The quantity to be paid for shall be the actual number of connections made in conformance with the plans and specifications and the orders of the Engineer.

Basis of Payment:

Payment will be made at the unit price bid for each connection which shall include the cost of all materials, labor and equipment necessary to complete the work except excavation and backfill which will be paid under Trench and Culvert Excavation Item 206.02 and the new pipe which shall be paid under the appropriate pipe item.

- ITEM 607.30010010 - STEEL CHAIN LINK FENCE WITH TOP RAIL, 4 ft HIGH**
- ITEM 607.30020010 - STEEL CHAIN LINK FENCE WITH TOP RAIL, 6 ft HIGH**
- ITEM 607.30030010 - STEEL CHAIN LINK FENCE WITH TOP RAIL, 8 ft HIGH**
- ITEM 607.30040010 - STEEL CHAIN LINK FENCE WITH TOP RAIL, 10 ft HIGH**
- ITEM 607.30050010 - STEEL CHAIN LINK FENCE WITH TOP RAIL, 12 ft HIGH**

All the provisions of Section 607 pertaining to Optional Chain Link Fence, Type I, with Top Rail shall apply except for the following:

The fence fabric and frame options shall be listed below:

	<u>Fabric</u>	<u>Frame</u>
1.	Galvanized Steel	Galvanized Steel
2.	Aluminum Coated Steel	Aluminum Coated Steel or Combined Coating on Steel

End, corner, pull and line posts, top rail and braces shall be either Class A, Schedule 40 Pipe or Class B, Steel Tubing, at the Contractor's option. The alternative Roll-formed and H Section posts, top rail and braces shall not be used. The size of the posts, top rail and braces shall be as indicated on the Standard Sheets.

Fittings shall conform to the requirements of Subsection 710-10 except that aluminum alloy fittings shall not be used.

Gate posts shall be steel of the type and size indicated on Standard Sheets except that the optional Roll-formed posts shall not be used.

The fence fabric shall be attached to the line posts with matching tie wires; either galvanized steel or aluminum coated steel. The tie wires shall be 9 gage (5/32 inch Nominal Coated Wire Diameter) and shall be spaced at a maximum of 14 inches. The tie wires shall be installed in accordance with the special note "Fence Fabric Tie Wires" which is included elsewhere in the proposal. Minor damage to the coating on the tie wires, caused by cutting and twisting operations, will be acceptable as determined by the Engineer.

The fabric shall be secured to all end, corner, pull and gate posts with stretcher bars fastened to the posts with stretcher bands spaced at a maximum of 14 inches. When the installation of the fencing is completed, the threads of the bolts in the stretcher bands shall be damaged, as directed by the Engineer, to prevent removal of bolts.

ITEM 607.9600008 - REMOVE AND DISPOSE OF EXISTING FENCE

DESCRIPTION:

The contractor shall remove existing fence in accordance with the plans, specifications and directions of the Engineer. All references to "fencing" shall include existing gates, if any to be removed.

MATERIALS:

Materials needed for modifying end sections shall conform to the requirements of Section 710 of the Standard Specifications or shall conform to the material requirements of the existing fence, as directed by the Engineer.

Concrete for footings shall conform to Section 607-2.01 of the Standard Specifications.

CONSTRUCTION DETAILS:

The contractor shall remove and dispose of the existing fence to a point shown on the plans or where directed by the Engineer. If a portion of the existing fence is to remain, the remaining end section shall be modified to adequately secure the fencing. This modified section shall include all hardware necessary to secure the fencing in a manner similar to the existing end section or as directed by the Engineer. Parts salvaged from the removed portion, acceptable to the Engineer, may be reused in the end section.

All work shall be done in a workmanlike manner with care taken not to disturb the surrounding area or existing fence to remain. Any damage to the area or existing fence to remain caused by the contractor's operations shall be repaired to the original condition at no expense to the state. Any concrete post footings shall be either broken up and removed or removed in one piece as determined by the contractor and approved by the Engineer. All post holes shall be filled to meet existing grade. All excavation and backfill shall conform to Section 203 "Excavation and Embankment".

METHOD OF MEASUREMENT:

This work will be measured as the number of feet of fence removed in accordance with the plans or as directed by the Engineer. An additional 10 foot allowance will be paid for each end section modified to secure the remaining fence.

BASIS OF PAYMENT:

The unit price bid shall include the cost of all labor, equipment and materials necessary to complete the work, including the cost of any fill required to fill the post holes.

ITEM 607.99870011 - REMOVE EXISTING CHAIN-LINK FENCING

DESCRIPTION

This work shall consist of removing and disposing the existing chain-link fencing (including gates, if present) from the locations indicated on the contract plans or where directed by the Engineer.

MATERIALS

None Specified.

CONSTRUCTION DETAILS

The Contractor shall remove and dispose away from the site the existing chain-link fencing (and gates, if present), including the fence posts and footings as directed by the Engineer. All excavated areas shall be properly filled to match the surrounding area to the satisfaction of the Engineer.

METHOD OF MEASUREMENT

This work will be measured as the number of feet of chain-link fencing removed. Measurement will be along the horizontal projection of the center of the fencing, center-to-center of terminal fence posts.

BASIS OF PAYMENT

The unit price bid per linear foot shall include the cost of furnishing all labor, materials, and equipment necessary to complete the work, including excavation, fill and all necessary incidentals.

DESCRIPTION:

This work shall consist of removing and disposing of existing concrete sidewalk and subbase, and replacing them with new, approved subbase material and concrete sidewalk at locations indicated in the contract documents and as directed by the Engineer.

MATERIALS:

The following sections of the standard specifications shall apply:

Subbase Course	304-2
Sidewalks, Driveways, Bicycle Paths and Vegetation Control Strips	608-2

Subbase Course shall meet the requirements of §304-1.02, Type 1 under Option B, except 98 % to 100 % of the material by weight, shall pass a 2” sieve

Concrete Sidewalks shall meet the requirements of §608-2.

Wire fabric for concrete reinforcement shall meet the requirements of §709-02.

Include the cost of adding water in the price bid unless the items for furnishing and applying water are included in the contract.

CONSTRUCTION DETAILS:

The following sections of the standards specifications shall apply:

Excavation and Embankment	203-3.02 B.
Sidewalks, Driveways, Bicycle Paths and Vegetation Control Strips	608-3

Construction of the subbase shall conform with the requirements of Section 304-3 of the Standard Specifications. Construction of the sidewalks shall conform with the requirements of Section 608-3 of the Standard Specifications.

This work shall consist of the following:

- A. Removing and disposing of existing concrete sidewalk and subbase material to a depth indicated in the contract documents and as directed by the Engineer. Care shall be taken not to damage adjacent sidewalk and other appurtenances that are to remain. Sawcutting the existing sidewalk at the limits of removal shall be as directed by the Engineer.

Any damage caused by the Contractor’s operations, during the sidewalk removal and disposal operations, to the sidewalk or appurtenances that are to remain shall be repaired and/or replaced by the Contractor at no expense to the State. These repairs and/or replacements shall be approved by

Engineer.

- B. Prior to the placement of the new subbase course, the existing surface shall be graded and compacted as directed by and approved by the Engineer.
- C. The subbase course shall then be placed and compacted in accordance with §304-3.01 thru §304-3.05 and as detailed in the contract documents.
- D. Concrete for new sidewalks shall be placed in accordance with §608-3.01 and to the thickness shown in the contract documents. Standard Sheet 608-01 shall be used as a guide in the construction of the sidewalk curb ramps. Prior to the placement of concrete, all curbs shall be reset or replaced as approved by the Engineer.
- E. Upon removal of forms, the area shall be cleaned of all debris to the satisfaction of the Engineer. All areas disturbed by this operation shall be graded and seeded as approved by the Engineer.
- F. Equipment and construction procedures shall be appropriate for the work as set forth in this operation. The Engineer shall review and approve use of all equipment to do this work prior to the beginning of work at each location.
- G. Material removed under this item shall be disposed of in conformance with the provisions of §203-3.02 B. *Disposal of Surplus Excavated Materials*.

METHOD OF MEASUREMENT:

This work will be measured as the number of square yards of concrete sidewalk placed.

BASIS OF PAYMENT:

The unit price bid per square yard of concrete sidewalk placed shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work.

The cost of saw cutting shall be included in the cost of this item. No direct payment will be made for losses of material resulting from compaction, foundation settlement, erosion, or any other cause.

No deductions will be made for the volumes occupied by manholes, catch basins and other such objects. No additional payment will be made for the protective layer, as stated in §304-3.04 *Traffic and Contamination*.

ITEM 619.67020010- TEMPORARY HIGHWAY LIGHTING SYSTEM

DESCRIPTION

Under this item the Contractor shall design, furnish, install, maintain, relocate and/or remove temporary lighting assemblies, wire, poles, connections to permanent lighting systems and power sources.

This item is to provide temporary lighting during construction to supplement the permanent roadway lighting system in achieving an uninterrupted lighted roadway surface, according to the criteria specified in the Plans.

MATERIALS

The luminaries shall be fully weather proof.

The luminaries shall be equipped with a built-in ballast for the proper wattage and operating voltage.

The components comprising the assembly of the upper half of the luminaries shall include a reflector, a porcelain enclosed mogul socket, and a twist-lock three prong receptacle for a photoelectric control (where required).

Multiple lighting wire and ground wire shall conform to subsection 723-70 and 723-75 respectively.

CONSTRUCTION DETAILS:

The Contractor shall submit proposed equipment shop drawings and associated photometrics certified by the manufacturer, proposed layout drawings, and lighting calculations of the proposed temporary roadway lighting system for review and approval by the Engineer. The drawings shall include the calculated point-by-point lighting levels, as well as the calculated veiling luminance ratio, average-to-minimum, and maximum-to-minimum ratio values. These values shall meet or exceed the criteria given in the plans. The layout drawings of the proposed temporary lighting system shall also include the proposed temporary power and control scheme, and include provisions for any required workarounds and/or temporary systems required to maintain power to and control of existing roadway and sign lighting outside the area of work. The drawings and calculations shall be prepared by or under the direct supervision of a Registered Professional Engineer in the State of New York, and bear that Engineer's stamp and signature.

ITEM 619.67020010- TEMPORARY HIGHWAY LIGHTING SYSTEM

Temporary lighting assemblies, poles and wires shall be designed, furnished, installed, maintained, repaired, replaced as necessary and energized as required.

In no case shall the existing lighting system be discontinued until the temporary lighting is in service and approved. Temporary lighting of lower intensity than indicated on the plans will not be permitted.

Temporary Highway Lighting System shall be connected to and operated by the permanent lighting system and shall contain luminaires with photoelectric cells. Nonconforming items and/or installation shall require special approval by the Engineer prior to placement.

Contractor shall make connections to existing permanent lighting systems or other temporary power sources. Coordination with local utility is the responsibility of the Contractor.

Work and testing shall conform to subsections 670-3.14, 670-3.15 and 670-3.16.

In the event that the Contractor fails to restore complete operation of any portion of the temporary roadway lighting system within 24 hours of any failure, the State may direct its own maintenance contractor to make repairs. The Contractor shall reimburse the State for all costs it incurred in restoring the lighting system.

Once the permanent highway lighting is installed and in operation, the temporary lighting assemblies, wires and poles shall be dismantled and removed from the site.

METHOD OF MEASUREMENT:

Payment for Temporary Highway Lighting System will be made on a lump sum basis.

BASIS OF PAYMENT:

The lump sum price bid for this item shall include the cost of all equipment, materials, temporary power connections and labor necessary to adequately and safely maintain the minimum light level indicated on the plans. Relocation and/or removal of temporary lighting system shall be included in the lump sum price bid.

All maintenance costs related to the temporary lighting system shall be included in this item.

The lump sum cost shall include the design of the temporary lighting system.

ITEM 619.67020010- TEMPORARY HIGHWAY LIGHTING SYSTEM

Energy costs for the temporary lighting system will be borne by the party mentioned in the contract documents.

In the event the contract completion date is extended, no additional payment will be made for temporary lighting system.

Monthly progress payments will be made for this item in proportion to the amount of contract work completed less any deductions for disbursements incurred restoring the temporary lighting.

DESCRIPTION

This work shall consist of preparing, maintaining and submitting a Progress Schedule using the Critical Path Method on Oracle-Primavera P6 software which demonstrates complete fulfillment of all work shown in the contract documents. All work to prepare and maintain the CPM Progress Schedule shall be performed using the scheduling software application. The Contractor shall regularly revise and update the Progress Schedule, and use it in planning, coordinating and performing all work. Schedule activities shall accurately depict the entire scope of work to be performed to complete the project including, but not limited to, all work to be performed by the Contractor, subcontractors, fabricators, suppliers, consultants, the Department, and others, contributing to the project. In preparing and maintaining the Progress Schedule, the Contractor shall take into account submittal requirements and proper submittal review times, coordination of submittals by subcontractors for fabricating and delivering materials and equipment, availability and abilities of workers, availability of construction equipment, weather conditions and site specific restrictions in operations.

DEFINITIONS

Activity - A discrete, identifiable task or event that usually has an expected duration, has a definable Start Date and/or Finish Date, and can be used to plan, schedule, and monitor a project.

Activity, Controlling - The first incomplete activity on the critical path.

Activity, Critical - An activity on the critical path.

Actual Start date- At the activity level, the Actual Start date represents the point in time that meaningful work actually started on an activity.

Actual Finish date - At the activity level, the Actual Finish date represents the point in time that work actually ended on an activity (Note: in some applications areas, the activity is considered “finished” when work is “substantially complete.”)

Backward Pass – Calculation of the late start and late finish dates for each activity, based on the start or finish dates of successor activities as well as the duration of the activity itself. It is also known as the second pass.

Baseline Progress Schedule - The Progress Schedule submitted by the Contractor and accepted by the Department that shows the plan to complete the construction contract work. The Baseline Progress Schedule represents the Contractor’s plan at the time of Contract Award or Notice to Proceed for completing the project.

Bid Date – The date the contract is let and there is an announcement by the Department of an apparent low bidder.

Completion Date, Contract - The date specified in the Notice To Proceed (NTP) letter for completion of the project or a revised date resulting from properly executed time extensions.

Anticipated Completion Date - The date forecasted by the Progress Schedule for the completion of the contract work.

Constraint - A schedule restriction imposed on the Start or Finish date(s) of an activity that modifies or overrides an activity's relationships.

Contemporaneous Period Analysis Method – A technique for evaluating schedule delays or time savings. The analysis period for the purpose of these provisions shall be the period covered in each regular progress update to the schedule, as they coincide with contract payments to the Contractor.

Contractor's First Day of Work - The day of the Contractor's first day of work which is Notice To Proceed (NTP)

Contractor's Last Day of Work - The Contractor's last day of work which is Contract Completion date.

Contractor Work Day - A calendar day scheduled for active prosecution of the work.

County Work days – Monday through Friday, with the exception of Holidays listed below. Days scheduled for the active prosecution of work activities by NC staff or NC's representatives.

Critical Path – In the Progress Schedule the critical activities shall be those activities being on the longest path. In a project network diagram, it is the series of activities which determines the earliest completion of the project.

Critical Delay - An event, action, or other factor that delays the critical path of the Progress Schedule and extends the time needed for completion of the construction project.

Critical Path Method (CPM) – A network analysis technique used to predict project duration by analyzing which sequence of activities (which path) has the least amount of scheduling flexibility (the least amount of float). A scheduling technique utilizing activities, durations, and interrelationships/dependencies (logic), such that all activities are interrelated with logic ties from the beginning of the project to the completion of the project. Early dates are calculated by means of a forward pass using a specified start date. Late dates are calculated by means of a backward pass starting from a specified completion date (usually the forward pass's calculated project early finish date).

Data Date – The date entered in the Project Details, in the Dates tab, which is used as the starting point to calculate the schedule. Everything occurring earlier than the data date is "as-built" and everything on or after the data date is "planned."

Deliverable – Any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project. Often used more narrowly in reference to an external deliverable, which is a deliverable that is subject to approval by the Department.

Draft Baseline Progress Schedule – An optional schedule submission that reflects an outline of the schedule format and content proposed by the Contractor's Project Scheduler to comply with the schedule provisions in the contract to solicit early comments by the Engineer, prior to the submittal of complete Baseline Progress Schedule.

Duration, Original - The original estimated number of working days (not including holidays or other nonworking periods) in which the work task associated with the activity is expected to be performed. (The

number of calendar days may be different based on the calendar assigned to the activity.) For certain activities such as concrete curing, or others approved by the Engineer, the calendar shall reflect no non-working days.

Duration, Remaining - The estimated time, expressed in working days (not including holidays or other nonworking periods), needed to complete an activity that has started but has not finished.

Early Completion Schedule - A progress schedule will be considered an early completion schedule when the schedule submitted by the Contractor indicates a completion date that is earlier than the specified contract completion date, or the Finish date of any interim Milestone work activity is earlier than the date specified in the contract. This includes, but is not limited to, B-Clock activities, activities subject to Incentive/Disincentive provisions, and/or specific Liquidated Damages provisions, and Lane Rental activities.

Final Baseline Progress Schedule - The original plan against which the Contractor's progress is measured. The Final Baseline Progress Schedule represents the original plan at the award of the contract, of what is expected to happen. Once the Final Baseline Progress Schedule is accepted by the Engineer it is saved and used as a basis to compare against Progress Schedules Updates.

Float Suppression - Utilization of zero free float constraints which allows an activity to start as late as possible by using all of its' available free float. This technique allows activities to appear more critical than if the activity's total float was based on early dates. Assigning zero free float prevents true sharing of total float between Department and the Contractor. Utilization of overly generous activity durations and overly restrictive calendar non-working periods are also considered to cause float suppression.

Float, Free - The amount an activity can slip without delaying the immediate successor activities. Free Float is the property of an activity and not the network path.

Float, Total - The amount of time an activity (or chain of activities) can be delayed from its early start without delaying the contract completion date. Float is a mathematical calculation and can change as the project progresses and changes are made to the project plan. Total Float is calculated and reported for each activity in a network, however, Total Float is an attribute of a network path and not associated with any one specific activity along that path.

Fragnet – A subdivision of a project network diagram usually representing some portion of the project.

Global data – Data classified by Oracle-Primavera software as Global, including Project Codes, Global Activity Codes, Global Calendars, Resource Calendars, Global Filters, Resources, Global Reports, User Defined Fields and Unit of Measure.

Key Plans - Key Plans are graphic representations made by the Contractor's Project Scheduler on paper copies of the appropriate contract plan sheets that reflect the Contractor's planned breakdown of the project for scheduling purposes to efficiently communicate the Contractor's activity coding scheme to County scheduling staff. The key plans prepared by the Contractor shall clearly define the boundaries of the work for each designated Area, the operations contained in various Stages of work, and work in the Work Zone Traffic Control (WZTC) Phases. The alphanumeric codes on the key plans shall match the code values for the activity code "Area", "Stage", and "WZTC Phase" in the Progress Schedule.

Longest Path - The sequence of activities through the Progress Schedule network that establishes the Scheduled Completion Date

Look-Ahead Schedule – A three week time segment generated from the accepted Progress Schedule that shows the actual work progressed during the previous one week and forecasts the work planned for next two week

period following the Data Date, and includes any major materials to be delivered and any lane closings or anticipated shifts in WZTC.

Milestone – An activity with zero duration that typically represents a significant event, usually the beginning and end of the project, milestones set forth in the contract proposal, construction stages, a major work package, or the contract interim time-related clauses.

Monthly Status Report – The report generated monthly from the updated Progress Schedule in an electronic Adobe Acrobat PDF format that reflects a Data Date for that Progress Schedule Update period. The report shall be formatted to fit ANSI Size D paper (610 mm x 914 mm) (24 inch x 36 inch), listing all work activities from the data date to contract completion, using the NYSDOT Status Report Layout or as ordered by the Engineer, sorted by Early Start Date, Total Float in increasing order, showing the Activity ID, Activity Description, Original Duration, Remaining Duration, Total Float, Early Start date, Early Finish date, Start date, Finish date and Calendar ID.

Narrative Report - A descriptive report submitted with each Progress Schedule. The required contents of this report are set forth in this specification.

Open End - The condition that exists when an activity has either no predecessor or no successor, or when an activity's only predecessor relationship is a finish-to-finish relationship or only successor relationship is a start-to-start relationship.

Predecessor - An activity that is defined by Schedule logic to precede another activity. A predecessor may control the Start Date or Finish Date of its successor.

Progress Schedule – A general Oracle-Primavera P6 Schedule as defined by this Specification.

Progress Schedule Update – Changes to the Progress Schedule that reflect the status of activities that have commenced or have been completed, including the following items: (a) Actual Start date and or Actual Finish date as appropriate; (b) Remaining Duration for activities commenced and not complete; and (c) Suspend or Resume dates for activities commenced and not complete.

Progress Schedule Revision – Revisions to the Progress Schedule ensure it accurately reflects the current means and methods of how the project is anticipated to progress, including modifications made to any of the following items: (a) changes in logic connections between activities; (b) changes in constraints; (c) changes to activity descriptions; (d) activity additions or deletions; (e) changes in activity code assignments; (f) changes in activity Productivity Rates; and (g) changes in calendar assignments.

Project Scheduler – The person that is responsible for developing and maintaining the Progress Schedule.

Projects Planned Start Date – The date entered in the Project Details, in the Dates tab, that reflects the Contractor's planned start of work (based on contract requirements, and reasonable expectation for a Notice to Proceed) at the time the bid was submitted to the Department.

Projects Must Finish By Date – A date constraint entered in the Project Details, in the Dates tab, that reflects the Contract Completion Date set in the Contract Documents or through a formal contract extension of time.

Recovery Schedule – A schedule depicting the plan for recovery of significant time lost on the project. This separate CPM schedule submission shall provide the resolution and include appropriate changes in network logic, calendar adjustments, or resource assignments.

Relationships - The interdependence among activities. Relationships link an activity to its predecessors and successors. Relationships are defined as:

Finish to Start - The successor activity can start only when the current activity finishes.

Finish to Finish – The finish of the successor activity depends on the finish of the current activity.

Start to Start – The start of the successor activity depends on the start of the current activity.

Start to Finish – The successor activity cannot finish until the current activity starts.

Resources, Contract Pay Item – Contract Pay Item resources shall be identified as a Material resource type. When required, Contract Pay Item resources are developed for each Pay Item in the contract, with the Resource ID matching the contract Pay Item and the Resource Name matching the description of the contract Pay Item.

Resources, Equipment – Equipment resources shall be identified as a Nonlabor resource type. A unique identifier shall be used in the Resource Name or Resource Notes to distinguish this piece of equipment from a similar make and model of equipment used on the project.

Resources, Labor – Labor resources shall be identified as a Labor resource type. Labor Resources shall identify resources that encompass direct labor at the Crew level.

Scheduling/Leveling Report – The report generated by the software application when a user “Schedules” the project. It documents the settings used when scheduling the project, along with project statistics, errors/warnings, scheduling/leveling results, exceptions, etc.

Substantial Completion - the day, determined by the Engineer, when all of the following have occurred:

1. The public (including vehicles and pedestrians) has full and unrestricted use and benefit of the facilities both from the operational and safety standpoint, and
2. All safety features are installed and fully functional, including, but not limited to, illumination, signing, striping, barrier, guard rail, impact attenuators, delineators, and all other safety appurtenances, and
3. Only minor incidental work, replacement of temporary substitute facilities or correction or repair remains for the Physical Completion of the Contract, and
4. The Contractor and Engineer mutually agree that all work remaining will be performed with short term lane closures to minimize delays, disruption, or impediment to the traveling public. No overnight lanes closures will be allowed.

Successor - An activity that is defined by Schedule logic to succeed another activity. The Start Date or Finish Date of a successor may be controlled by its predecessor.

Time Impact Analysis - A technique to demonstrate the comparison of a time impact of a Progress Schedule revision prior to a change in the Contract work, against the current accepted Progress Schedule. It is also known as a “What-If” analysis.

Work Breakdown Structure (WBS) - A deliverable-oriented grouping of project elements, which organizes and defines the total scope of the project. Each descending level represents an increasingly detailed definition of project components or work packages.

Work Days – A calendar day (Monday through Friday) on which NC offices are open to the public for business NC recognized public holidays are not workdays. Days scheduled for the active prosecution of work activities by NC staff or the NC’s representatives. (NC Workday calendar)

Nassau County Holidays	
New Year’s Day	January 1
Martin Luther King Day	3rd Monday in January
Lincoln’s Birthday	February 12th
President’s Day	3rd Monday in February
Memorial Day	Last Monday in May

Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Election Day	1st Tuesday in November
Veteran's Day	November 11th
Thanksgiving Day	4th Thursday in November & Following Friday
Christmas Day	December 25th

If the holiday occurs on a Saturday, it may be observed the Friday before. If the holiday occurs on a Sunday, it may be observed the Monday after.

Work Package - A deliverable at the lowest level of the work breakdown structure. A work package contains activities.

MATERIALS

Oracle-Primavera P6 software (as accepted by the Engineer)

CONSTRUCTION DETAILS

A. General. In addition to the attributes of the Progress Schedule provisions as set forth in NYSDOT Specification §108-01, the Contractor shall prepare, furnish, and maintain a computer-generated Progress Schedule using the Critical Path Method (CPM) utilizing Oracle-Primavera scheduling software. The CPM Progress Schedule shall be prepared based on the principles defined by the latest issue of the Construction Planning & Scheduling Manual published by the Associated General Contractors of America, except where superseded by the contract documents such as the CPM Special Notes and this specification.

The Contractor and the Department shall use the Progress Schedule to manage the work, including but not limited to the activities of subcontractors, fabricators, the Department, other involved agencies and authorities, other entities such as utilities and municipalities, and all other relevant parties involved with the project.

No work other than installation of the Engineer's Field Office, mobilization, procurement and administrative activities, installation of construction signs, installation of erosion and pollution protection, clearing and grubbing, field measurements, and survey and stakeout will be permitted to start until the Baseline Progress Schedule has been submitted to the Engineer, and the Engineer determines there are no deficiencies consistent with those identified in paragraph I.1 *Immediate Rejection of Progress Schedule Submissions*.

The purpose of the Progress Schedule, and scheduling provisions in the contract, shall be to:

- a) Ensure that the Contractor and the Department have a detailed plan and resources to complete the project in accordance with contract time requirements;
- b) Provide a means of monitoring the progress of work;
- c) Aid in communication and coordination of activities among all affected parties;
- d) Analyze the effect of changed conditions on any milestone dates or on the contract completion date;
- e) Analyze the effect of change orders for extra work or deductions, and unanticipated delays, on the contract completion date;
- f) Establish a standard methodology for time adjustment analysis based on the principles of the Critical Path Method of scheduling, to analyze delays and resolve construction disputes concerning time;
- g) Determine appropriate extensions or reductions of Contract Time.

In scheduling and executing the work, the Contractor shall:

- a) Sequence the work commensurate with the Contractor's abilities, resources and the contract documents. The scheduling of activities is the responsibility of the Contractor.

- b) Ensure that Progress Schedules prepared by the Project Scheduler for submission to the Department are in compliance with the Contract. The intent should be that Schedule submissions and accompanying Narratives are timely, complete, accurate, and in compliance with the Contract.
- c) Communicate all Contract changes, and decisions or actions taken by the Contractor and all subcontractors, fabricators, etc., that effect the Progress Schedule to the Project Scheduler in a timely manner to allow appropriate development, maintenance, and update of the Progress Schedule.
- d) Include all work contained in the Contract and all work directed in writing by the Engineer. Work activities directed by the Engineer to be added to the Contract shall be included in the next Monthly Progress Schedule submission.
- e) Assure that Progress Schedule Updates reflect the actual dates that work activities started and completed in the field.
- f) Break a schedule activity into multiple activities to reflect a discontinuity in the work if a work activity is suspended in the field and restarted at a later date, and the break between when the work was suspended to when it was resumed is significant compared to the original activity duration.
- g) Ensure the Progress Schedule contains all work constraints and Milestones defined in the Contract.
- h) Schedule the work using such procedures and staging or phasing as required by the Contract. Work designated as part of separate stages may be performed concurrently with other stages where allowed by the Contract or where approved by the Department.

Failure by the Contractor to include any element of work required by the Contract in the accepted progress schedule does not relieve the Contractor from its responsibility to perform such work.

Should the Contractor choose to show activities in the schedule that reflects their plan of work prior to the contract award, the Department does not incur any liability and such work being performed between the letting date and the contract award date shall be considered at risk work.

Errors or omissions on schedules shall not relieve the Contractor from finishing all work within the time limit specified for completion of the contract.

B. Project Scheduler. The Contractor shall designate an individual, entitled the Project Scheduler, who will develop and maintain the construction progress schedule. The Project Scheduler shall be present at the Preconstruction Schedule Meeting, prepared to discuss, in detail, the proposed sequence of work and methods of operation, and how that information will be communicated through the Progress Schedule. The Project Scheduler shall attend all meetings, keep notes which may affect the CPM schedule, including but not limited to those between the Contractor and their Subcontractors and between the Contractor and the Department. The Project Scheduler shall be knowledgeable of the status of all aspects of the work throughout the length of the Contract, including but not limited to original contract work, additional work, new work, and changed conditions of work.

C. Scheduling Software. Oracle-Primavera P6 software and computer system shall be used by the Contractor. The Contractor shall develop, update, and revise the Progress Schedules using Oracle-Primavera P6 software application-

In general, schedules are developed from the Contractor's knowledge of the project, and the means and methods represented in those schedules are based on the Contractor's understanding of the contract documents, and the Contractor's past experience, which are unique to the Contractor. Schedule activity data are therefore the intellectual property of the Contractor and will not be made available to other Contractors. However, all project schedule data are the sole property of the Department.

D. Meetings.

D.1. Preconstruction Schedule Meeting. The Contractor shall contact the Construction Engineer after notification they are the apparent low bidder, but no later than two (2) Work Days following Notification to Proceed (NTP) to schedule a Preconstruction Schedule Meeting. The purpose of this meeting will be to discuss essential matters pertaining to the satisfactory scheduling of project activities, and to resolve any known questions regarding interpretation of the contract requirements for this work.

The Project Scheduler shall be prepared to discuss the following:

- a) The proposed hierarchal Work Breakdown Structure (WBS) for the Progress Schedules. The Project Scheduler shall provide a paper copy at the meeting.
- b) The proposed project calendars.
- c) The proposed project activity codes and various code values for each activity code. The Project Scheduler shall provide a paper copy at the meeting.
- d) The specifics of any contract Time-Related Clauses (A+B Bidding, Incentive/Disincentive, Liquidated Damages, Lane Rental, etc.);
- e) The Contractor's schedule methodology to be employed, proposed work sequence and any proposed deviations from the contract plans with respect to Staging or Work Zone Traffic Control phasing.
- f) The Key Plans shall be provided at the meeting.
- g) The factors that the Contractor determines to control the completion of the project and any milestone activity completion dates contained therein.
- h) The Project Scheduler shall provide an outline for the content of the Narrative report for future Progress Schedule submissions.
- i) Schedule submission protocol for Progress Schedule submissions.

The Contractor shall submit to the Resident Engineer (RE) for review, a minimum of five (5) Work Days prior to the Preconstruction Schedule Meeting, the following: a copy of the Key Plans, a print out of the proposed Work Breakdown Structure, a print out of each of the proposed project Calendars showing the Work Days versus non-work days and hours per day, and a list of the Code Values for each Project Activity Code proposed to be used in the schedules.

The Resident Engineer (RE) will be available to answer questions regarding scheduling, including: the availability of Department supplied electronic file(s) containing sample project schedule information, sample progress schedule narratives, Special Notes for CPM Scheduling, and required standard format for CPM Progress Schedules for contract work.

The Contractor shall schedule meetings as necessary with the Engineer to discuss schedule development and resolve schedule issues, until the Final Baseline Progress Schedule is accepted by the Engineer.

D.2. Progress Meetings. One topic of the regular progress meetings held by the Engineer and attended by the Contractor shall be a review of the monthly Status Report generated from the Progress Schedule. The Contractor shall be represented by the Field Superintendent and Project Scheduler. The Project Scheduler shall bring a copy of the printed plot of the current Status Report to the progress meeting, the report shall show the current anticipated schedule for all remaining work with the critical path activities highlighted.

- a) The review of the Status Report serves as the forum to discuss project progress and delays, suggested remedies, necessary Progress Schedule revisions, coordination requirements, change orders, potential Contractor time extension requests, and other relevant issues. If contract work is falling behind the Progress Schedule, the responsible party (i.e. Contractor) shall be ready to discuss what measures it will take in the next thirty (30) days to put the work back on schedule so as to meet the contract Completion Date specified in the contract.
- b) Items of discussion will include, but are not limited to: project progress; schedule progress; near term and long-term schedule issues, including RFIs, Shop Drawing submittals, permit

work, utility relocations, mitigation work; project issues and risks; proposed solutions; and any relevant technical issues that are schedule related.

- c) At the meeting the Project Scheduler shall compile an action item list that describes who is responsible for existing or pending issues and the date by which the issue needs to be resolved to avoid delays. The Contractor shall forward a copy of the action item list to the Engineer within 2 business days following the meeting.

E. Progress Schedule Submissions:

E.1. Draft Baseline Schedule. The Contractor is encouraged, but not required, to submit a Draft Baseline Progress Schedule that demonstrates a sample of how the Project Scheduler's proposed alphanumeric coding structure and the activity identification system for labeling work activities in the CPM progress schedule will conform to the detailed requirements of this specification.

This submittal may be made anytime following notice to the Contractor that they are the apparent low bidder on the contract.

Critical items for this review should include but are not limited to: the proposed WBS for subsequent progress schedules; the proposed project Calendars; project Planned Start date; project Must Finish By date; major milestone activities (e.g. - Award, Notice to Proceed, Contractor's First Day of Work, Contractor's Last day of Work, Anticipated Completion Date); and between fifty to one hundred summary activities for the major work deliverables of the contract (e.g. - pave EB from STA x to STA y, construct roundabout 1, construct bridge xyz, etc.) that have assigned Activity Ids, Activity Descriptions, Activity Durations, Predecessors, Successors, and Activity Relationships. These summary activities will be broken down into, or supplemented with, individual work activities for the baseline submission.

If any Crew resources are included, the composition of the staffing (the number and titles of the various staff) shall be listed in the Notes tab of the Crew resource, and the composition of the crews shall be included in the narrative. To the extent practicable, the Draft Baseline Progress Schedule should include administrative and procurement activities to be accomplished during the contract; planned submittal, review, and approval dates for shop drawings, working drawings, fabrication drawings, and contractor supplied plans, procedures, and specifications.

Any submission of a Draft Baseline Progress Schedule should be accompanied by a written Narrative that provides details of the Calendar assignments of Working Days versus non-work days, outlines the sequence of planned operations to complete the project work, and provides the proposed Activity Codes and Code values to be assigned to activities in future submissions of project progress schedules.

The review and comment by the Engineer of the sample schedule should assist the Project Scheduler in assuring the first submittal of the Baseline Progress Schedule will be in general conformance with the requirements of the specification and other contract requirements, and that major rework of the Baseline Progress Schedule will not be required. The Engineer will review the logic diagram, coding structure, activity identification system, and Narrative; and provide comments for required changes by the Project Scheduler for implementation in the submission of the Baseline Progress Schedule. The Engineer will provide written comments on major deficiencies within five (5) Workdays of receipt. The Department reviews Draft Baseline Progress Schedules solely for format and will not consider any submission of a Draft Baseline Progress Schedule for approval as an Early Completion Schedule.

E.2. Baseline Progress Schedule– Within ten (10) Work Days of receipt of the contract NTP, the Contractor shall prepare and submit a Baseline Progress Schedule that meets the following requirements:

- a) The schedule shall accurately reflect the proposed approach to accomplish the work outlined in the Contract documents and conforms to all requirements of this specification.
- b) The schedule shall define a complete logical plan that can realistically be accomplished, to execute the work defined in the Contract.
- c) The schedule shall comply with the work constraints and milestones defined in the Contract as well as all other contractual terms and conditions. The schedule shall be consistent in all respects with the

specific interim Time-Related Contract Provisions, and any order of work requirements of the contract documents. The schedule shall meet all interim milestone dates and the contractor’s Anticipated Completion Date shall not extend beyond the contract completion date. This submission shall reflect the Contractor’s plan at the time of contract award, and prior to the start of any work.

- d) **Float.** No negative float is allowed in the Baseline Progress Schedule submission.
- e) **Data Date.** The contract Award Date shall be entered as the Data Date. If the Contractor submits a Baseline Progress Schedule @ Bid submission, the Data date shall be the date of the schedule submission to the Engineer and not prior to the bid date. Time shall be the end of the work day.
- f) **Activity Codes.** The Progress Schedule shall have assigned, to the maximum extent practicable, the Global Activity Codes Including, but not limited to Responsible Party, Stage and Type of Work. The Contractor shall also use a Project Level activity code named “Subcontractor” with code values identifying each of the approved subcontractors working on relevant activities.
- g) **Project Level Layouts & Filters.** Any “Layouts”, “Filters” and “Report” formats that the Contractor develops for the various Progress Schedules submissions to the Engineer shall be saved and made available to all other users of the project schedule with a name that includes the contract D#. The Contractor shall assign appropriate Activity Codes and provide custom Layouts, Filters, and/or report formats necessary to allow the Engineer to generate a report from the each Progress Schedule submission of all submittals required under the contract (i.e., shop drawings, required permits, erection/demolition plans, etc.). The list shall show scheduled submission date, review date, and acceptance date for each submittal and identify the earliest activity affected by each of these submittals. This list shall be generated from each Progress Schedule submission until all such activities are completed.
- h) **Schedule Submission**
 - i) Within the timeframe indicated in Table 1 column 1, the Contractor shall send an email to the Engineer and Construction Supervisor, notifying them the schedule is ready for review. **In the following table, the Construction supervisor may change the time.**

TABLE 1 (in Work Days)		
Timeframe from receipt of Notice to Proceed to Submission of complete Baseline Schedule. (Column 1)	Timeframe for Engineer’s Review (Column 2)	Timeframe from Notice to Proceed to acceptance by the Engineer not to exceed (Column 3)
10	10	40

- ii) The Engineer will review the schedule and return it, accept it with comments, or reject it within the timeframes indicated in Table 1 column 2, following the date of receipt of the Contractor’s submission.
- iii) If the schedule is returned with comments, the Contractor shall address all comments and revise the schedule as necessary. The Contractor shall complete the Final Baseline Progress Schedule and obtain the acceptance of the Engineer within the timeframe required in Table 1 column 3.
- iv) If the schedule is accepted without any comments by the Engineer, the Contractor shall copy the schedule and rename it for submission as the Final Baseline Progress Schedule
- v) **In no way does the Baseline Progress Schedule modify the contract documents.**

E.3. Final Baseline Progress Schedule

- a) If the Baseline Progress Schedule is returned to the Contractor with comments, the Contractor shall make a copy of the schedule and rename it as the Final Baseline Progress Schedule with comments addressed and revisions made as necessary. The Contractor shall complete the Final Baseline Progress Schedule and obtain acceptance of the Engineer within the timeframe required in column 3 of Table1,

or within one week of the Contractor's receipt of the final comments by the Engineer, whichever is sooner.

- b) The Engineer shall review the schedule and return it, accepted or with comments, within 5 Work Days following the date of receipt of the Contractor's submission.
- c) The Final Baseline Progress Schedule must be "accepted" or "accepted as noted" by the Engineer prior to the Department evaluating any Contractor disputes associated with time impacts. This does not preclude the Contractor from submitting a dispute while the schedule is being reviewed for acceptance.

E.4. Progress Schedule Updates and Monthly Status Reports:

- a) The Contractor shall perform a Progress Schedule Update, on a minimum, at the end of each month.
- b) The Contractor shall generate a Monthly Status Report at the end each month after performing the Progress Schedule Update and Scheduling the project with a Data Date of day the schedule was updated and submit it to the Engineer by the beginning of business each Monday. The Status Report shall be generated using the activity Layout named Monthly Status Report, with activities grouped by the WBS, sorted by Finish Date. The Gantt Chart shall clearly indicate the project critical (longest) path. Graphical representations shall be shown at a suitable scale to be legible and readable.
- c) **During any time periods within the contract that special time-related contract provisions are in effect, including Incentive/Disincentive Periods, the Engineer may require more frequent Progress Schedule Updates and/or Progress Schedule Status Reports.**

E.5. Monthly-Progress Schedule Submissions.

- a) **First Progress Schedule Submission** – Within three Work Days following acceptance of the Final Baseline Progress Schedule the Contractor shall perform a Progress Schedule Update to reflect the status of all activities where work was performed in the time period between the start of work and acceptance of the Final Baseline Progress Schedule. This shall include actual dates entered in the Actual Start and Actual Finish columns, and percentage of work complete for uncompleted activities, in addition the Contractor shall incorporate any Progress Schedule Revisions that reflect any changes in how future work activities are to be completed.
- b) **Subsequent Progress Schedule Submissions** – The Contractor shall prepare and submit subsequent Progress Schedule submissions on a regular basis based on the **Monthly Progress Schedules Schedule Updates and Revisions**
The Contractor shall submit a copy of the current Progress Schedule that includes all Progress Schedule Revisions and Progress Schedule Updates to reflect the actual and planned prosecution and progress of the contract work. Progress Schedule Updates shall reflect the status of activities that have commenced or have been completed, including the following items: (a) actual dates in activity Actual Start and Actual Finish columns as appropriate; (b) actual Remaining Duration for activities commenced and not complete; and (c) actual activity Suspend or Resume dates for activities commenced and not complete. Progress Schedule Revisions reflect modifications made to activities in the current project baseline schedule in any of the following items: (a) activity Original Duration; (b) changes in logic connections between activities; (c) changes in Constraints; (d) changes to Activity Descriptions; (e) activity additions or deletions; (f) changes in Activity Code assignments; (g) changes in Calendar assignments, and Work Days; (h) Productivity Rates; (i) a list of Notebook Topic additions and changes . All "Out of Sequence" activities noted in the scheduling log shall be corrected to reflect the current construction operations.
- c) As ordered by the Engineer, for any contract time extension requests the Contractor shall include: a Time Impact Analysis (TIA) for any changes to the schedule for future work for such issues as Added Work, VECP, or Changed Conditions; and a Delay Analysis that documents all delays from the Contract Award to the current date that is based on critical path delays that occurred when comparing

subsequent Monthly Progress Schedule submissions and the supporting delay documentation in the Progress Schedule Narratives.

E.6. As-Built Progress Schedule. As ordered by the Engineer, the Contractor shall submit the As-Built Progress Schedule with Actual Start and Actual Finish dates for all activities, within ten (10) Work Days following final acceptance of work by the Commissioner.

E.7. Look-Ahead Schedule. Except during winter shutdown periods the Contractor shall prepare a Look-ahead Schedule as either a plotted report from the current progress schedule, or as a narrative report, and provide it to the EIC on a weekly basis, or if approved by the Engineer on a mutually agreed upon interval. The Look-ahead schedule shall include all work activities planned for the next two week period, and include all work activities progressed in the previous one week period, and should also show: anticipated lane closures, road closures and detours, environmental issues, and utility issues. The Engineer will provide the Project Scheduler with guidelines for determining the begin dates and end dates for the one or two week reporting periods, along with the how the plotted schedule report or narrative report shall be formatted.

The Department generally uses this Look-ahead schedule to facilitate communication with other Federal or State agencies, local municipalities, utility companies, railroads, emergency service providers, public news media and other affected parties.

F. Detailed Progress Schedule Requirements.

F.1. Baseline Progress Schedule. As a minimum, the Contractor shall address the following:

- a) Defining Project details and defaults – Within the Dates tab, the “Planned Start” shall be the Letting Date, the “Data Date” shall be the date of Contract Award, the “Must Finish By” date shall be the contract Completion Date. Within the Settings tab, define the Critical Activities as the “Longest Path”.
- b) Sufficient activities shall be included to assure that there is adequate planning for the entire project. The appropriate number of activities will be largely dependent upon the nature, size, and complexity of the project. In addition to all site construction activities, network activities shall include: activities necessary to depict the procurement/submittal process including shop drawings and sample submittals; the fabrication and delivery of key and long-lead procurement elements; testing of materials, plants, and equipment; settlement or surcharge periods activities; sampling and testing period activities; cure periods; activities related to temporary structures or systems; activities assigned to subcontractors, fabricators, or suppliers; erection and removal of falsework and shoring; major traffic stage switches; activities assigned to the Department and other involved State agencies and authorities, including final inspection; activities to perform punch list work; and activities assigned to other entities such as utilities, municipalities, County government/agencies, and other adjacent contractors. The schedule shall indicate intended submittal dates and depict the review and approval periods as defined in the Contract Documents for Department review.
- c) The following Activity ID’s and Activity Descriptions as shown in Table 2, **subject to changes as approved by the Engineer**, shall be incorporated into all Progress Schedules:

TABLE 2					
Activity ID	Activity Description	Duration (Min)	Predecessor	Logic Tie	Responsible Party
C00005	Preconstruction Schedule Meeting	1 Work Day	M00001	SS	NC
C00011	Prepare & Submit DMWBE Goals	Minimum 1 Contractor Work Day	M00001	SS	Contractor

C00015	DMWBE Utilization Approved	15 Work Days	C000011	FS	NYSDOT/NC
C00030	Submit Proof of Insurance	1 Contractor Work Day	M00001	SS	Contractor
M00025	Contract Award Date	0 - Finish Milestone	00020, C00015	FF	NYSDOT/NC
C00010	Preconstruction Meeting	1 Work Day	M00001	SS	NYSDOT/NC
C00035	Notification to Proceed	5 Work Days	M00025, C00030	FS	NYSDOT/NC
C00040	Prepare/Submit Safety & Health Plan	Minimum 1 Work Day	M00001	SS	Contractor
C00045	Approve Safety & Health Plan	20 Work Days	C00040	FS	NYSDOT/NC
M00050	Contractor's First Day of Work	0 - Start Milestone	C00035, C00045	FS	Contractor
C00055	Set Up Engineer's Field Office	20 Contractor Work Days	C00035	FS	Contractor
C00060	Prepare & Submit Baseline Progress Schedule	10 Work Days from NTP	C00005	FS	Contractor
C00065	Review Baseline Progress Schedule	10 Work Days	C00060, M00025	FS	NYSDOT/NC
C00070	Accept Baseline Progress Schedule	1 County Business Days	C00065	FS	NYSDOT/NC
C00075	Mobilization	20 Contractor Work Days	M00050	SS	Contractor

TABLE 2

Activity ID	Activity Description	Duration (Min)	Predecessor	Logic Tie	Responsible Party
M00100	Field Work Begins	0 - Start Milestone	M00050, C00055, C00060		Contractor
M00900	Substantial Completion	0 - Finish Milestone	See definition	FF	Contractor
C09010	Other Agency Inspection	20 Work Days	M00900	FS	Others
C09020	NYSDOT Final Inspection	20 Work Days	M00900	FS	NYSDOT/NC
C09030	Punchlist Work	20 Contractor Work Days	C09020	FS	Contractor
M00950	Contractor's Last Day of Work	0 - Finish Milestone	C09030	FF	Contractor
M00999	Anticipated Completion Date	0 - Finish Milestone	M00950	FF	Contractor
C09040	Demobilization	10 Contractor Work Days	C09020	FS	Contractor

M00925	Recommendation for Final Acceptance	0 - Finish Milestone	C09040	FF	NYSDOT/NC
M09999	Final Acceptance	0 - Finish Milestone	M00925	FF	NYSDOT/NC

The Logic Tie shown shall be used as a relationship to the predecessor activities contained in the column named Follows.

- d) **Work Breakdown Structure (WBS)** - A multilevel hierarchal WBS shall be incorporated that provides a deliverable-oriented grouping of activities and defines the total scope of the project. The Contractor shall develop a detailed project specific WBS for the Engineer’s review and approval. The Engineer shall make the final determination on the number of levels of the WBS, and how the activities shall be grouped to represent the deliverables of the project.

For all projects the first two levels (nodes) of the WBS shall be labeled as follows:

- Level 1 - is the project level; and shall have the project name.
- Level 2 - shall have three nodes; “PRECONSTRUCTION”, “CONSTRUCTION”, and “POST CONSTRUCTION”;
- Level 3- under “PRE-CONSTRUCTION”, shall include at least three nodes “GENERAL SUBMITTALS”, “SHOP DRAWINGS”; and “PROCUREMENT/FABRICATION/DELIVERY”.
- Level 3- under “CONSTRUCTION”; shall have three nodes “PRE-CONSTRUCTION”, “CONSTRUCTION OPERATIONS”, and “POST CONSTRUCTION/CLOSEOUT”;

Under the “CONSTRUCTION OPERATIONS” node, the grouping of activities may vary depending on the scope and nature of the project work. The Contractor shall coordinate with the Engineer to determine the best way to represent (group activities) the project deliverables (i.e. Bridge, Roundabout, Highway segment, Interchange, Intersection, etc.) and the various Stages or Phases of work. The Engineer may require sub nodes for AREA (geographic area within the project limits), STAGE, or for a bridge project SUBSTRUCTURE, SUPERSTRUCTURE, and DECK .

Generally Level 4 would be by geographic area within the project limits, Level 5 would be by highway feature (bridge, highway segment, intersection), Level 6 the highway features should be broken into their components (a bridge into components such as Piles, Substructure, Superstructure), and a highway segment into components such as pavement, drainage, earthwork, lighting, traffic signals, etc.

An example Work Breakdown Structure is shown below in Figure 1

FIGURE 1

WBS Code	WBS Name
D269997-WBS	Replace State Route 123 Bridge over RR - BIN 1-2345-6
D269997-WBS.1	PRE-CONSTRUCTION
D269997-WBS.1.1	GENERAL SUBMITTALS
D269997-WBS.1.2	SHOP DRAWINGS
D269997-WBS.1.3	PROCUREMENT / FABRICATION / DELIVERY
D269997-WBS.1.4	PERMITS
D269997-WBS.1.5	UTILITY NOTIFICATIONS
D269997-WBS.2	CONSTRUCTION OPERATIONS
D269997-WBS.2.1	MILESTONES
D269997-WBS.2.2	START-UP / ADMINISTRATIVE
D269997-WBS.2.3	STATE ROUTE 123 BRIDGE OVER RR - BIN 1-2345-6
D269997-WBS.2.3.1	MPT - State Route 123 Bridge over RR
D269997-WBS.2.3.2	Substructure - State Route 123 Bridge over RR
D269997-WBS.2.3.2.1	South Abutment - State Route 123 Bridge over RR
D269997-WBS.2.3.2.2	Center Pier - State Route 123 Bridge over RR
D269997-WBS.2.3.2.3	North Abutment - State Route 123 Bridge over RR
D269997-WBS.2.3.3	Superstructure - State Route 123 Bridge over RR
D269997-WBS.2.3.3.1	Structural Members - State Route 123 Bridge over RR
D269997-WBS.2.3.3.2	Deck - State Route 123 Bridge over RR
D269997-WBS.2.3.3.3	Other Features - State Route 123 Bridge over RR
D269997-WBS.2.3.4	Approaches - State Route 123 Bridge over RR
D269997-WBS.2.3.4.1	South Approach - State Route 123 Bridge over RR
D269997-WBS.2.3.4.2	North Approach - State Route 123 Bridge over RR
D269997-WBS.2.3.5	Demolish Existing Bridge - State Route 123 Bridge over RR
D269997-WBS.2.5	HIGHWAY WORK - STATE ROUTE 123
D269997-WBS.3	POST-CONSTRUCTION / ACCEPTANCE

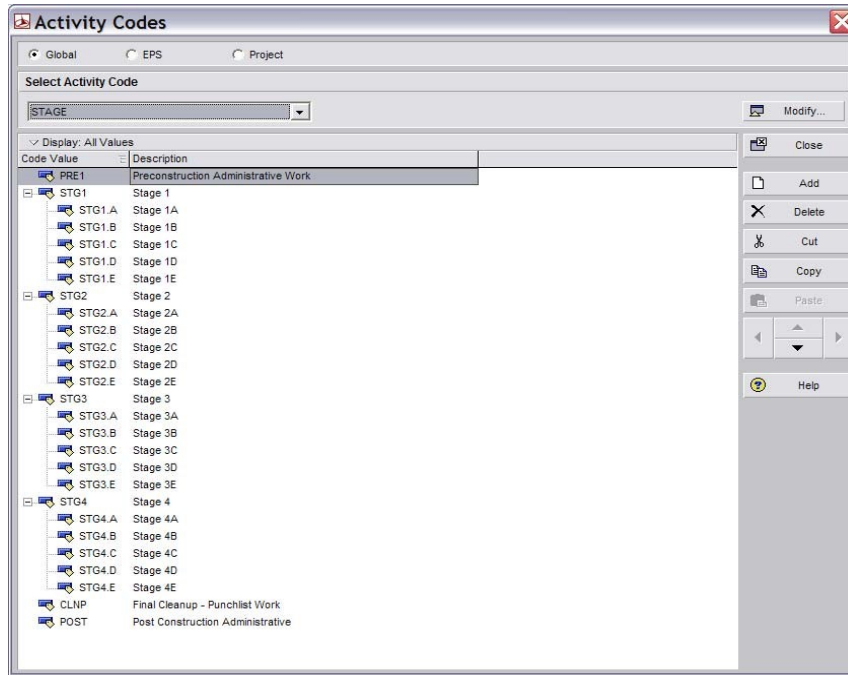
- e) **Activity ID** - Include a unique identification number for each activity. Activity ID numbers shall not be changed, or reassigned for the duration of the contract. Task type Activity IDs shall be prefixed by a “C”. Milestone type activities shall be prefixed by an “M”.
- f) **Activity Name** - Clearly and uniquely define each activity name with a description of the work that is readily identifiable to inspection staff and the progress of each activity can be measured. Each Activity shall have a narrative description consisting at a minimum of a verb or work function (i.e. form, pour, excavate, etc.), an object (i.e. slab, footing, wall, etc.), and a location (i.e. STA, bridge or retaining wall number, street, etc.). The work related to each Activity shall be limited to one Area of the contract, one Stage of the contract, one WZTC Phase of the contract, and one Responsible Party of the contract. The Activity Name shall not be changed for the duration of the contract without approval of the Engineer.
- g) **Milestone Activities** - Include activities for all contract milestones that define significant contractual events such as Contract Award, Notice to Proceed, Contractor Start Work, Substantial Completion, Physical Completion, Contract Completion, and coordination points with outside entities such as utilities, State agencies, Authorities, municipalities, Time-Related Contract Provisions, etc.
 - The Contract Completion milestone shall have a primary constraint of “Finish on or before” and the contract Completion Date.
 - The Contractor Start Work” Start milestone activity, that will eventually reflect the actual date the Contractor started work authorized under the contract.

- h) **Activity Durations** – Define the Original Duration of each activity in units of whole work days, except for activities of less than one day duration which should be shown in units of tenths of a day. Except submittal/procurement activities, durations shall not exceed 15 work days unless approved by the Engineer. Durations for Department submittal reviews shall meet the requirements set forth in the contract documents. If requested by the Engineer, the Contractor shall justify the reasonableness of planned activity time durations. Task Dependent activities shall not have a zero duration.
- i) **Activity Relationships** - Clearly assign predecessors and successors relationships to each activity, and assign appropriate logic ties between activities (Finish to Start, Start to Start, Finish to Finish, etc.). Do not have any open ended activities, with the exception of the first activity and last activity in the schedule. An activity may only appear once as a predecessor or successor to another specific activity, but may be assigned as a predecessor or successor to many different activities. Do not include inappropriate logic ties with Milestone activities (For a finish milestone activity: a predecessor shall only be assigned a Finish to Finish logic tie, a successor shall only be assigned a Finish to Start or Finish to Finish logic tie. For a start milestone: a predecessor shall only be assigned a Finish to Start or Start to Start logic tie, a successor shall only be assigned with a Start to Start logic tie). Lag time may not exceed 10 days. The Contractor shall not use negative Lag times.
- j) The Contractor shall assign the ‘Submittal’ activity as a predecessor to all Review and Approval type activities to be performed by Department staff.
- k) **Activity Constraint Dates** – The Contractor shall not have any constrained activities, with the exception of contractual dates, unless the Engineer accepts such constraints in writing. Milestone activities shall be included for the Contract Award which shall have a primary constraint of “Finish On” and the date of contract signature by the State Comptroller, and for the Anticipated Contract Completion which shall have a primary constraint of “Finish on or before” and the contract completion date indicated in the contract documents. Only contractual/owner-designated constraints are allowed unless specifically authorized by this specification or the Engineer. . If used, only Constraints of type, “Finish on or Before”, ‘Start on or After”, or when deemed appropriate by the Engineer “As-Late-As-Possible” are acceptable
- l) **Activity Dates** – With the exception of contract Milestone dates, “Actual Start” and “Actual Finish” dates and “Planned Start” and “Planned Finish” dates, activity dates shall be calculated by the project scheduler tool within the Oracle-Primavera software. No Actual Start or Actual Finish dates shall be entered in the Baseline Progress Schedule, with the exception of activities that were completed prior to the Contract Award.
- m) **Calendars** - Use clearly defined calendars that account for expected seasonal weather conditions (including winter shutdown periods) and environmental permit requirements, for the planning and scheduling of activities. Do not incorporate an activity with a description of “Winter Shutdown” that requires constraints. Provide the working days per week, non-working holidays. Also provide the number of shifts per day, and the number of hours per shift by using the Calendar feature, called “Time Periods” in the P6 software. Incorporate any seasonal restrictions to the work within calendars assigned to activities.
- Global calendars used in the progress schedule shall be those established by the Department. There are only two Global Calendars developed and maintained by the Department for use by Contractor’s, they are the following:
 - NYSDOT/NC Milestone/Curing 365 Day / 8 hour
 - NC Work Days, 5 Day Work Week w/ Holidays (see table on page 5)
- All milestone activities in the schedule shall be assigned the standard Global calendar named ‘NYSDOT/NC Milestone/Curing 365 Day / 8 hour’, this calendar should also be assigned to any activities for concrete curing. Activities for shop drawing reviews and other approvals by

Department personnel shall be assigned the Department's standard Global – "NC Work Day, 5 Day Work Week w/Holidays, Field" Calendar that reflects all holidays as listed above.

- Changes desired for these calendars shall require prior approval of the Engineer. Calendars related to specific resources (i.e., Crane, Bidwell, Asphalt Paver) shall be established as Project level Calendars (not Resource calendars), with the Calendar name clearly identifying the resource.
 - All other calendars developed by a Contractor shall be established as Project Calendars, with the calendar name including the contract # and describing the function. All work activities of the Contractor shall be assigned to Project Calendars.
 - **The Baseline Progress Schedule cannot include a calendar that reflects any workers working more than 8 hours in any one calendar day or more than 5 days in any one week.** (§102-10 LABOR AND EMPLOYMENT) Following the contract award the Contractor can add additional calendars in their next Monthly Progress Schedule submission based on an approved overtime dispensation.
- n) Clearly define significant interaction points between the Contractor, the Department, and other entities including but not limited to: Federal, State and local agencies/authorities; and utilities. All activities of the Department, utility companies, adjacent contracts, and other entities that affect progress and influence any contract required dates including durations shall be shown in the schedule. This includes dates related to all Permits or Agreements. The schedule shall give special consideration to sensitive areas such as road closures and parklands and shall indicate any time frames when work is restricted in these sensitive areas as outlined in the permits issued by the regulatory agencies, and provided in the contract documents.
- o) **Activity Resources** – It shall be the Contractor's responsibility to assure the activity logic in the schedule properly reflects their resource limitations. An activity shall not involve multiple crews comprised of the Contractor and a subcontractor, or multiple subcontractors. The level of resource loading of the schedule shall be dependent on the schedule.
- p) **Production Rates** – The Contractor shall enter the quantity of the major item of work for each non administrative activity in the schedule into the field labeled "PR Quantity", the Unit of Measure for that major item in the field labeled "PR Unit", the anticipated production rate of the equipment and labor resources for that activity of work in the field labeled "Production Rate / Day", and the associated duration for that work in the field labeled "PR Duration". These are all Activity level UDF fields, and can be found in the activity Layout named Contractor Production Rates.
- q) **Activity Codes** – The Contractor shall include a well-defined activity coding structure that allows project activities to be sorted and filtered. Activity Codes shall include, but not be limited to: Responsible Party; Stage; Area of Work; Type of Work; Subcontractor; and additionally as required by the Engineer to meet the needs of the specific contract work to facilitate the use and analysis of the schedule.
- 1) Additional Activity Codes developed for specific projects shall be established as Project Activity Codes. As a minimum this shall include the SUBCONTRACTORS.
- r) **Activity Code Values** – Each Activity Code shall be broken down into various Activity Code Values that are then assigned to activities, as shown below in the example of Figure 2

FIGURE 2



- s) **Activity Code Assignments** - For each activity, within the activity details the Contractor shall assign Activity Code values to identify the “Responsible Party” (i.e. – Contractor, NYSDOT, Utility Co, Municipality) for the work to be performed (one and only one responsible party shall be assigned to each activity), the “Stage” of the contract for the work that will be performed, the “Area” where the work is to be performed, the “WZTC Phase”, and the Type of Work (i.e. - Procurement, Paving, Embankment, Excavation, Electrical, Signing, etc.). For activities included in work governed by time related contract provisions, the appropriate “Time Related” activity code shall be utilized. For activities included in work added and/or changed within an Order-On-Contract, the appropriate “Added/Changed Work” code shall be utilized. For all work activities performed by the Contractor or subcontractors/fabricators/suppliers, “Contractor” shall be designated as the Responsible Party
- t) **Interim Milestone Dates with Liquidated Damages and Special Time-Related Contract Provisions** (i.e. – A+B Bidding, Incentive/Disincentive provisions, Lane Rental) – Each time-related contract provision in the contract shall be represented in the progress schedule by having a start and finish milestone, with appropriate predecessors and successors assigned to all schedule activities considered part of that time-related contract provision work including the start and finish milestone activities. In addition, the Start milestone for the time-related contract work shall have predecessors and/or date constraints assigned that include those defined in the contract documents, and the Finish milestone for the time-related contract work shall have successors and/or date constraints assigned that include those defined in the contract documents. All schedule activities associated with each specific time-related contract provision shall be assigned to a separate node within the project WBS and the WBS node description shall be labeled accordingly, in addition these activities shall be assigned the appropriate Time-Related Clauses activity code value. A Level Of Effort activity shall be used for each time related contract provision (i.e. - “Incentive 1 Duration” or “B Clock 1 Duration”), this activity shall have the Start Milestone as a predecessor with a SS relationship and the Finish Milestone as a successor with a FF relationship and the duration of this activity shall be calculated when the project is scheduled.

- u) **List of Submittals** – The Contractor shall submit with the Progress Schedule a list of all Submittals (i.e. - Shop Drawings, required permits, Erection/Demolition plans, Health and Safety Plan, etc.) generated from the Baseline Progress Schedule for review and approval by the Engineer. The Contractor shall use a Filter to limit the schedule activities shown in the report to only the prepare/submit, and review/approve activities related to submittals. The report shall be in Adobe PDF format and transmitted to the Engineer by email.

F.2. Monthly Progress Schedules. In addition to the detailed schedule requirements for the submission of the Baseline Progress Schedule, the Contractor shall complete the following additional requirements for these regular Progress Schedule submissions: a) Activity Status -

- i) Durations – the Original Duration shall not be changed without prior written justification by the Contractor, and written approval by the EIC. The Contractor shall edit the Remaining Duration to reflect progress made on work activities and shall not use Duration percentage. If a proposed change to Original Duration is due to additional or changed work to the contract the Contractor shall instead add an activity to reflect this additional work and assign the appropriate Activity Code. The Contractor shall not use zero durations for Task Dependent activities.
 - ii) Started and Finished dates – for each activity where work was begun during the Weekly/Biweekly or Monthly reporting period, the Contractor shall check the box adjacent to Started and enter the date the work began. For each activity where work was completed during the Weekly/Bi-weekly or Monthly reporting period, the Contractor shall check the box adjacent to Finished and enter the date the work was completed.
 - iii) Suspended work – The first time that work has been suspended on a schedule activity, the Contractor shall enter the Suspend and Resume fields within the Project Details under the Status tab. For any subsequent suspensions of work to that activity the Contractor shall break that activity into two or more activities to accurately reflect the suspension and resumption of work dates in the field, and to more accurately reflect the relationship to other work activities.
- b) Calendars – To change a project calendar for activities scheduled in the future, the Contractor shall copy the calendar and use a revised name that includes a reference to which Update the change was incorporated (i.e. - D260000 - Concrete Calendar should be revised to D260000 – 2 - Concrete Calendar to reflect the 2nd Monthly Update when the change was made to the calendar). The reason for the change in the calendar shall be documented in the Narrative.
- c) Resources –
For each month of the contract the Contractor’s Progress Schedule submission shall include labor, equipment and pay item resources for an additional year of anticipated contract work until all activities in the schedule have resources defined. Until such time that all activities are resource loaded, for any activity that resource limitations are affecting the prosecution of work, as determined by the Engineer, labor and equipment resources shall be entered in the schedule by the Contractor. When the resource assignments are complete for all schedule activities, the Engineer will compare pay item quantities in the schedule with pay item quantities in the Engineer’s estimate to determine if all contract work is represented in the Contractor’s schedule.
- d) Notebook Tab –
- i) Delays - For any activities on the critical path that are delayed during this monthly reporting period, the Contractor in agreement with the Engineer shall enter the dates the activity was delayed and the reason for such delay in the Notebook tab of that activity. The reviewing scheduler will perform the delay analysis and will inform the Contractor accordingly.
 - ii) Activity Changes – For any changes to activity logic, calendar assignments, suspended work, added or revised lag periods or constraints the Contractor shall document the change and reason in a

- Notebook Topic for that activity by assigning the appropriate “Progress Submission # Revision” and describing the changes.
- e) Production Rates – For all non-administrative that have shifted onto the critical path, or now have less than 20 days of Total Float, the Contractor shall enter the Production Rate information required in paragraph F.1.p. For any activities where the work to be performed is similar in nature to work already performed on the same project and that the Production Rate for the work to be performed is different than the actual Production Rate for work already performed the Engineer may require the Contractor to adjust the Duration for the work to be performed to reflect the more appropriate Production Rate.
 - f) Deleted work – If work has been deleted the corresponding work activities in the schedule shall be deleted. The Contractor shall not just zero the activity duration since the calendar assigned to the zero duration activity shall still affect the logic of future work activities.
 - g) The Project Scheduler can modify the project’s Data Date through the Schedule tool.
 - h) The Contractor shall complete the following additional requirements:
 - i) **Data Date** - the “Data Date” shall be the date the Project Scheduler last edits the schedule prior to submission to the Engineer (generally the last working day of the month).
 - ii) **Submission frequency.** The Contractor shall submit the schedule file and Narrative Report to the Engineer **monthly**. The schedule submission to the Engineer shall be made within three (3) Work Days of the last day of the month, whether or not the Engineer has accepted the previous Progress Schedule submission.

G. Detailed Narrative Requirements:

G.1. For the Baseline Progress Schedule. The Contractor shall include a narrative in Microsoft Word and/or Adobe Acrobat format that includes the following topics and attachments:

- a) **Contract Identification.** Include the contract D number, project name, project location, and name of Prime Contractor.
- b) **Key milestone dates.** Include the actual contract Award Date, original and adjusted contract Completion Date, Substantial Completion Date, and anticipated completion of all project work. Also include any contract Interim Milestone dates (I/D, B-Clock, LD, etc.), and scheduled Start and Finish dates for those Milestone activities.
- c) **General approach.** Describe the Contractor’s general approach to construct the Work outlined in the baseline schedule. Address the reasons for the sequencing of work and describe any resource limitations, potential conflicts, and other salient items that may affect the schedule and how they may be resolved.
- d) **Key Plans.** If not provided in the contract plans, or if modified by the Contractor, provide copies of the appropriate contract plan sheets marked up to correlate values on the contract plans (for Area of Work, Stage of Work, and WZTC Phase) to the Contractor’s planned breakdown of the project (i.e.- Activity Codes, Activity Descriptions) for scheduling purposes.
- e) **Logic Justifications.** The justification(s) for each activity with a duration exceeding 15 working days. The justification(s) for Contractor imposed activity constraints proposed in the schedule. The reason for any lags assigned to any activities.
- f) **Calendars.** Include a list of calendars which have been incorporated in the schedule, and for each calendar the general reason for it’s use in the schedule.

- g) **Critical Path issues.** A brief discussion of the critical path shown in Appendix 2, highlighting any potential challenges that are foreseen associated with the critical path work.
- h) **Coordination issues.** Outline any anticipated coordination issues related to work activities by other entities that require additional information from, or action by, the Engineer.
- i) **APPENDIX 1 – Scheduling/Leveling Report.** This appendix in Adobe Acrobat PDF file format, formatted to fit standard ANSI Size A (Letter) size paper (8.5 inch x 12 inch) (215 mm x 279 mm) paper, printed with portrait orientation, shall be included with the narrative as a separate file.

A complete Scheduling/Leveling Report file generated by Contractor’s Oracle-Primavera scheduling software application) which includes the Schedule Settings, Statistics, Errors, Warnings, Scheduling/Leveling Results, Exceptions, Activities with unsatisfied constraints, Activities with unsatisfied relationships, and Activities with external dates. The statistics shall include, # of Activities, # of Activities Not Started, # of Activities In Progress, # of Activities Completed, # of Activity Relationships, and # of Activities with Constraints. Total number of activities on the critical path, percent complete, activities without predecessors, activities without successors, and activities out of sequence.

- j) **APPENDIX 2 – Progress Schedule plot.** This appendix in Adobe Acrobat PDF file format, formatted to fit ANSI Size B (Ledger) paper (11 inch x 17 inch) (279 mm x 431 mm) paper, printed with Landscape orientation, shall be included with the narrative as a separate file.

Appendix 2 to the narrative shall be an electronic schedule plot (Adobe Acrobat format), with activities sorted by Start Date in ascending order, Grouping of activities by WBS, and only the “Longest Path” filter applied. This plot shall provide a clear critical path from the Data Date to the last activity in the schedule.

Graphical representations shall be shown at a suitable scale to be legible and readable.

G.2. Monthly Update Progress Schedule. For each Progress Schedule submission, the Contractor shall submit a revised narrative in Microsoft Word or Adobe Acrobat format that includes (but is not limited to) the information from paragraph G.1, and the following **additional** topics:

- k) **Project Progress.** Discuss the progress that was made during the current reporting period, and document any Total Float gained or recovered during the period. For major work items describe the differences between the actual work performed and the work planned for the period as represented in the preceding Progress Schedule submission, including explanations for the deviations.
- l) **Suspended Work.** For all suspended work activities that could otherwise logically be progressed, identify the responsible party prohibiting the progression of the work, as well as the detailed reasons why.
- m) **Project Delays.** Discuss any delays experienced during the current reporting period. Quantify any relative change in Total Float for the project since the last Progress Schedule submission. For each activity on the critical path (include Activity ID’s and Activity Descriptions) where work was delayed during the reporting period, provide the following detailed information including:
 - the extent in days (negative float) of the delay, and events that caused the delay.
 - the party(s) responsible for the delay event(s).
 - the other activities in the construction schedule affected by the events.

- the reasonable steps needed to minimize the impact of the delay, and which party needs to take the action(s).

The Contractor is reminded of the requirements of Notice & Recordkeeping as found in NYSDOT §104-06 of the contract specifications and as they relate to Disputed Work. The Contractor shall include a copy of any notice provided to the Engineer for any time-related delay dispute as part of their narrative.

- n) **Project Issues.** List any other problems experienced during this Progress Schedule submission period, the party responsible for the problems, and the Contractor's intentions to resolve the issue(s).
- o) **Schedule changes.**
- i) List of all added or deleted activities included in this Progress Schedule submission, and the reason(s) for and the impact(s) of such changes.
 - ii) List all changes in activity Original Durations, the justification for such change(s), and the impact(s) of such changes.
 - iii) List all changes in relationships between activities included in this Progress Schedule submission, and the reason(s) for and the impact(s) of such changes.
 - iv) List any addition or deletion of activity or project constraints, and the reason(s) for and the impact(s) of such changes.
 - v) List all changes to the project calendars, and the reason(s) for and the impact(s) of such changes.
- p) List all activities for procurement of long lead time materials that are behind schedule and the reason(s) why.
- q) Description of any changes to the critical path since the last Progress Schedule submission and the impacts of such changes.
- r) The major work elements, as defined in the WBS, to be accomplished during the next monthly work period.
- s) Any potential problems that are anticipated for the next monthly work period and the proposed solutions to such problems. Identify potential problems or risks that either the Department or Contractor may be potentially responsible for. Explain what action the responsible party (i.e. - Department or Contractor) needs to take and the date by which time the action needs to be taken to avoid the problem.
- t) Any planned acceleration of activities that the Contractor anticipates to undertake within the next monthly work period that either the Department directed, or that the Contractor believes is necessary.
- u) The following appendix in Adobe Acrobat PDF file format, formatted to fit ANSI Size E paper (34 inch x 44 inch) (863 mm x 1117 mm) paper, printed with Landscape orientation, shall be included with the narrative as a separate file.
- APPENDIX 3 – A listing of all work activities as of the data date, using the Appendix 1 activity layout, sorted by Finish date, Total Float in increasing order, showing the Activity ID, Activity Name, Original Duration, Remaining Duration, Actual Duration, Total Float, Early Start date, Start date, Finish date, Late Finish date, and Calendar ID. The grouping of activities shall be by WBS. The Gantt Chart shall clearly indicate all activities in the schedule. Graphical representations shall be shown at a suitable scale to be legible and readable.
 - APPENDIX 4 – A listing of work activities filtered by Notebook Topics assigned as of the data date, sorted by Finish date and Total Float in increasing order, showing the Activity ID, Activity Name, and Notebook Topic. The grouping of activities shall be by WBS.

H. Schedule Submission Methodology. Progress Schedule submissions will only be considered complete when all documents and data have been provided to the Engineer.

H.1. File Naming Convention. The schedule filename shall conform to the requirements of the Department and as defined by the Engineer.

I. Progress Schedule Review and Analysis:

I.1. Immediate Rejection of Progress Schedule Submissions. The following deficiencies in a

Contractor's progress schedule submission shall be grounds for the immediate rejection by the EIC, without further review, analysis and/or comments.

- a) Failure of the Project Scheduler to submit "schedule" of the project, as of the data date.
- b) Failure to attach a copy of the complete Scheduling/Leveling Report
- c) Any activities without predecessors, or activities without successors, appearing in the Scheduling/Leveling Report with the exception of the first and last activity in the schedule.
- d) Any activity constraints appearing in the Scheduling/Leveling Report that have not been approved in writing by the EIC, or that are not specifically allowed by this specification.
- e) Any Activities with Actual Dates > Data Date appearing in the Scheduling/Leveling Report.
- f) Any Milestone Activities with invalid relationships appearing in the Scheduling/Leveling Report.
- g) Failure to have a clearly defined Critical Path from the Data Date to the last activity in the schedule, using the Longest Path method. This would reflect logic errors in the project schedule.
- h) Failure to attach the schedule Narrative and required appendices.
- i) Repeated failure to correct "Out-Of-Sequence" activities.

If any of these deficiencies are found, the Contractor's submission shall be considered deficient, and Engineer will notify the Contractor immediately by return E-mail of the rejection of the schedule submittal.

I.2. Schedule Analysis Method.

Events, actions, and progress that cause delays or gains to the Progress Schedule will be analyzed solely by the "Contemporaneous Period Analysis" method.

I.3. Department Review and Acceptance of Progress Schedules.

The Engineer will review the Monthly Progress Schedule submissions and will prepare a written response (Progress Schedule Review Report) to the Contractor's submission within five (5) Work Days following receipt of the Contractor's complete schedule submission. The Engineer will either "accept" the schedule, "accept as noted", or "reject" the schedule for re-submittal by the Contractor.

If the Progress Schedule submission is not in compliance with contract requirements, the Engineer may reject the submittal and shall forward any comments and requests for schedule revisions to the Project Scheduler by email, with a copy to the Contractor. The Project Scheduler shall address all comments in writing and/or make the requested revisions, and resubmit the revised schedule within three (3) State Business days of the Engineer's reply. If the Engineer determines the revised submission still does not meet the contract requirements, any further revisions required thereafter shall also be submitted for acceptance within (3) Work Days of the request for revisions by the Engineer.

For schedules that are "accepted as noted" the Engineer shall forward any comments, or requests for revisions, to the Contractor by email,. The Project Scheduler shall address all comments in writing and/or make the requested revisions as part of the next scheduled Progress Schedule submission.

The Project Scheduler shall make adjustments to the Progress Schedule in accordance with the Engineer's comments and resubmit copies for review consistent with the requirements of this section.

The Engineer, by accepting the progress Schedule, does not agree that the Progress Schedule is reasonable or that by following the Progress Schedule the Contractor can complete the work in a timely manner. If, after a Progress Schedule has been accepted by the Engineer, either the Contractor or the

Engineer discover that any aspect of the Schedule is on error, or something significant has been omitted, the Contractor shall correct the Progress Schedule in the next Progress Schedule submission and describe this revision in the Narrative report.

Acceptance of progress schedules by the Engineer shall not be construed to imply approval of any particular construction methods or sequence of construction or to relieve the Contractor from its responsibility to provide sufficient materials, equipment and labor to guarantee the completion of the contract in accordance with the contract documents.

Acceptance of the progress schedule by the Engineer does not attest to the validity of assumptions, activities, relationships, sequences, resource allocations, or any other aspect of the progress schedule. Within the contractual constraints, the Contractor is solely responsible for the planning and execution of the work.

Acceptance of the progress schedule by the Engineer shall not be construed to modify or amend the contract agreement or the date of completion therein. Completion dates can only be modified or amended by standard contractual means, Request For Extension of Completion Date.

If any resources are included in the Progress Schedule, it is not intended that the Engineer, by accepting the schedule should use the Contractor's resource data for anything other than determining the reasonableness of achieving the Contractor's production rates. Resources included with the accepted CPM schedule shall not be misconstrued as a cost benchmark for the performance of planned or actual work.

Once the progress schedule has been accepted, the Contractor shall not deviate from it without first notifying the Engineer in writing.

Upon receipt from the Contractor of the corrected schedule, a new review period by the Engineer of five (5) Work Days will begin.

J. Changes to Progress Schedule due to Added/Deleted/Changed Work:

J.1. Changes to the contract. In the event a notice of a change to the contract is received, the appropriate changes to the progress schedule shall be made, as necessary, to incorporate the anticipated added/deleted/changed work and the Contractor shall notify the Engineer in writing within 10 (ten) calendar days if there is any effect of such change to the schedule. Change to the contract includes, but is not limited to, Extra Work, Change Orders, Suspensions of Work Directed by the Engineer, Changed Condition, and Value Engineering Change Proposals. Added, deleted and/or extra work associated with Change Orders shall be reflected in the next Monthly Progress Schedule Submission in anticipation of and prior to the date in which the work physically takes place without regard to the dates when the actual Change Order was approved. The effect of the change to the contract on the projects Critical Path shall be stated. Extra work or additional work that does not affect the controlling operation on the critical path will not be considered as the basis for a time extension. All schedule activities effected by added, deleted or changed work that is included in a signed Order-On-Contract, Field Change Order, or Authorization of Extra Work (with the exception of minor quantity changes that do not impact contract milestones), or work activities performed by the Contractor at risk in anticipation of such Department approval, shall be assigned the appropriate Activity Code (Added/Changed Work) and Code Value (sequentially numbered) to denote which "Changed Contract Work" order number correlates to those activities of work.

J.2. Time Impact Analysis.

For each request of an adjustment of contract time due to an anticipated change to future work in the Progress Schedule, when the Contractor or Engineer consider that an anticipated or approved change to the contract may impact the critical path and contract progress by more than a calendar month, the Contractor shall submit a Time Impact Analysis (TIA). The TIA shall be submitted as part of any Order on Contract (Change Order) and/or VECP if the critical path changes by more than a calendar month. The TIA shall be based on a revised Progress Schedule and shall be submitted as an electronic file (using Microsoft Word for the narrative) containing:

- a) The TIA shall illustrate the impacts of each change or delay on the current scheduled completion date or internal milestone, as appropriate.
- b) The analysis shall use the accepted Monthly Progress Schedule that has a data date closest to and prior to the event as the “Current Baseline”, this shall then be compared against the “What-if Project Plan Baseline” for the purpose of the TIA.
- c) If the Engineer determines that the accepted schedule used does not appropriately represent the conditions prior to the event, the accepted schedule shall be updated to the day before the event being analyzed.
- d) The TIA shall include an impacted schedule (“What-if Project Plan Baseline”) developed from incorporating the actual or anticipated event into the accepted schedule by adding or deleting activities, or by changing durations or logic of existing activities.
- e) If the impact schedule shows that incorporating the event negatively modifies the critical path and scheduled completion date of the accepted schedule, and the Engineer accepts the impacted schedule, the difference between scheduled completion dates of the two schedules shall be equal to the proposed adjustment of contract time.
- f) The Engineer may construct and utilize an appropriate project schedule or use another recognized method to determine adjustments in contract time until the Contractor provides the TIA.
- g) The Contractor shall submit a TIA within fifteen (15) State Business Days of receiving a written request for a TIA from the Engineer.
- h) The Contractor shall allow the Engineer ten (10) Work Days after receipt to accept or reject the submitted TIA. All accepted TIA schedule changes shall be included in the next Monthly Progress Schedule submission.
- i) If a TIA submitted by the Contractor is rejected by the Engineer, the Contractor shall meet with the Engineer to discuss and resolve issues related to the TIA. If agreement is not reached, the Contractor will give notice in conformance with §104-06 Notice & Recordkeeping, and submit in accordance within the provisions in §105-14.E "Required Content of *Dispute Submissions*".
- j) The Contractor shall only show actual as-built work, not unapproved changes related to the TIA, in subsequent Monthly Progress Schedules submissions. If agreement is reached at a later date, approved TIA schedule changes shall be included in the next Monthly Progress Schedule submission.
- k) Request for a contract time extension will not be processed until the receipt and approval of a Time Impact Analysis. **However, all extension of time will only be considered at the end of the project completion date.**

K. Failure to Submit Progress Schedules and/or Recovery Schedules:

- K.1.No progress payment for this item of work shall be made until the progress schedule is “accepted” or “accepted as noted” by the Engineer.
- K.2.If the Contractor’s Progress Schedule submission is rejected due to any deficiency noted in paragraph I.1(a) through (i), it shall be considered an incomplete submission and therefore substantially deficient.
- K.3.If the Contractor’s revised Progress Schedule submission does not address the written comments provided by the Engineer and does not include a written explanation with a reasonable rational for not addressing those comments, the submission shall be considered deficient.
- K.4. If the Contractor fails to submit a CPM Progress Schedule conforming to the provisions required under this specification, to the degree that such failure is deemed by the Construction Supervisor to adversely affect the management of the project and/or the administration of the construction contract, liquidated damages will be assessed as determined under Basis of Payment.

L. Recovery Schedule

- L.1 If the latest completion time for any work on the current Progress Schedule results in an activity being delayed ten percent or more of the time beyond the required Contract duration or any specified Milestone duration, as adjusted if appropriate, the Engineer may require the Contractor to submit a Recovery

Schedule and written description of the plan to recover all lost time and maintain the required Completion Date or specified Interim Milestone Date(s).

L.2. With the Recovery Schedule the Contractor shall submit a narrative that identifies where additional labor and/or equipment resources will be allocated. Alternately, the Contractor may elect to provide the makeup of their Crew resources in the narrative and assign those Crew resources to the appropriate activities in the Progress Schedule. The makeup of the Crew shall include the various Labor classes and equipment that comprise the Crew along with the quantity of each labor class and type of equipment. Equipment resources shall be shown for major or specialty equipment such as tower cranes, piledrivers, barges, asphalt pavers, concrete pavers, dozers, front end loaders, backhoes, rollers, excavators, graders, long line striping truck or other equipment that cannot be rented easily.

The Contractor shall provide a reasonable plan for accomplishing the work of the contract within the current completion date, or to the requested contract extension date. The Engineer will use the Recovery Schedule to evaluate time extensions, with or without charges.

M. Submission of progress schedules with projected Early Completion date(s):

The Contractor may indicate a projected early completion date on any progress schedule submission without compensation

N. Float

During the course of contract execution, Total Float generated due to the efficiencies of either party (Owner or Contractor) will be considered project Float that is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party. Any party assigned activity responsibility within the schedule has the full use of the project Float until it is depleted.

METHOD OF MEASUREMENT:

The quantity shall be measured for payment on a Lump Sum basis.

The minimum lump sum bid for this item shall be the unit price shown in the itemized proposal.

Failure of the Contractor to bid at least the minimum amount will result in the Department adjusting the Contractor's bid to include the minimum bid amount for this item.

BASIS OF PAYMENT:

The lump sum price bid for CPM Progress Schedules shall include all labor, material, and equipment necessary to satisfactorily complete the work.

Progress payments will be made at 25 percent of the lump sum price bid upon acceptance of the Final Baseline Progress Schedule and the List of Submittals. 70 percent will be paid in subsequent contract payments, in proportion to the number of months remaining in the original contract duration, less any non-payment for substantial deficiencies. The remaining 5 percent will be paid upon acceptance of the As-built Progress Schedule.

A. Non-Payment. No payment will be made for any Progress Schedule submitted more than twenty-one calendar days late. For each calendar day during which there are substantial deficiencies with the Progress Schedule no payment will be made. The amount of such non-payment will be 1/30th of the Monthly Payment Amount multiplied by the number of days there are substantial deficiencies.

B. Liquidated Damages. Liquidated damages will be assessed for each subsequent calendar day or part thereof that a cited deficiency resulting in non-payment is not corrected or is permitted to recur. Liquidated damages will be assessed at the rate equal to 1/10th of the Monthly Payment Amount.

If an extension of time with the assessment of engineering charges and/or liquidated damages is approved, no additional payment will be made for CPM Progress Schedules.

C. Payment will be made under

Item No.	Item	Pay Unit
639.210053	Critical Path Method (CPM) Progress Schedule with Monthly Update	LS

To make the item compatible with the existing Computerized Engineers Estimate System the letters will be replaced as per below.

X=1 (monthly)

N=5 (Nassau) C=3 (County)

Disclaimer: Adopted from NYSDOT Specification 639.21010011

**ITEM 655.07010010 - CAST FRAME F1, WITHOUT CURB BOX AND WITH
RETICULINE GRATE G1**

**ITEM 655.07020010 - CAST FRAME F2, WITHOUT CURB BOX AND WITH
RETICULINE GRATE G2**

**ITEM 655.07030010 - CAST FRAME F3, WITHOUT CURB BOX AND WITH
RETICULINE GRATE G3**

All conditions and requirements of Items 655.0701, 655.0702, and 655.0703 of the Standard Specifications shall apply except for the following modifications:

These shall be cast frame without curb box and with reticuline grate as detailed on the plans.

ITEM 655.16000011 - REMOVE AND DISPOSE OF FRAMES AND GRATES

DESCRIPTION:

Under this item the Contractor shall remove and dispose of the frames and grates indicated on the plans or as ordered by the Engineer.

MATERIALS:

None specified.

CONSTRUCTION DETAILS:

The Contractor shall remove and dispose of the frames and grates as indicated on the plans or ordered by the Engineer.

METHOD OF MEASUREMENT:

Measurement will be taken as the number of frames and grates removed, and disposed. A frame and grate combination shall be measured as one unit.

BASIS OF PAYMENT:

Payment will be made at the unit price bid which shall include the cost of furnishing all labor, materials, and equipment necessary to complete the work.

ITEM 655.25mn0005 – FURNISH AND/OR INSTALL INLET ASSEMBLY, AS SPECIFIED

DESCRIPTION:

Under this item, the Contractor shall furnish and/or install inlet assemblies as described in the contract documents. The provisions of Standard Specifications Section 655 shall apply, as modified herein.

MATERIALS:

Castings: The provisions of Section 655-2.01 shall apply.

Fabricated articles: The provisions of Section 655-2.02 shall apply.

Other: When other types of inlet assemblies are specified, the materials furnished and/or installed shall meet the requirements in the contract documents.

CONSTRUCTION DETAILS:

The provisions of Section 655-3 shall apply.

METHOD OF MEASUREMENT:

The quantity to be measured for payment will be the number of each type of inlet assembly satisfactorily furnished and/or installed as serialized in the contract documents.

BASIS OF PAYMENT:

The provisions of Section 655-5 shall apply for each type of inlet assembly as serialized in the contract documents.

nn = denotes as described in contract documents

ITEM 680.83200010 - LOCATE AND MARKOUT INFORM AND STATE LIGHTING FACILITIES

DESCRIPTION:

Under this item, the Contractor shall locate, identify and markout all underground Information for Motorists (INFORM) System facilities and State lighting facilities at each work location within the contract limits, in accordance with the contract documents and as directed by the Engineer.

MATERIALS:

All instruments, equipment, stakes, paint and any other material necessary to perform the work satisfactorily shall be provided by the Contractor.

Equipment utilized to locate underground or buried cables and conduit shall be specifically designed for that purpose. This equipment shall be capable of locating energized, non-energized, loaded and unloaded cables. It shall also be designed to generate a discriminating signal on conduits or cables at any accessible point so that they can be individually selected and traced.

CONSTRUCTION DETAILS:

It is the Contractor's responsibility to determine the exact locations of all INFORM underground facilities and State lighting facilities, and to avoid any interference and conflict of any type.

The Contractor is cautioned that abandoned cables may exist within the contract limits which may tend to complicate or mislead tone out operations.

The Contractor shall immediately notify the Engineer if any interferences are encountered. The Contractor shall be responsible for the cost of all damage to INFORM and State lighting underground and above ground facilities caused by his operations. All repairs required for INFORM facilities will be made by others under the direction of the State. All damaged State lighting facilities shall be replaced in kind or repaired A.O.B.E. The Contractor shall be responsible for all costs to make such repairs.

Surface Markout of the underground facilities shall be intelligible painted markings or stakes. The Contractor shall be responsible for maintaining the markings until they are no longer needed. If the markout becomes worn or obliterated in any fashion before completing excavation operations, then the appropriate facilities shall be re-identified and marked out.

Ground rods, power supplies, batteries, connecting cables and any other incidentals, as required and recommended by the specific cable locating equipment manufacturer chosen, shall be furnished and installed by the Contractor.

Approval for access to INFORM equipment cabinets and pullboxes shall be obtained from the Engineer prior to attempting entry to such locations.

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ITEM 680.83200010 - LOCATE AND MARKOUT INFORM AND STATE LIGHTING FACILITIES

METHOD OF MEASUREMENT:

The work for this item will be measured for payment on a lump sum basis for the work completed, in accordance with the contract documents, and as directed by the Engineer.

BASIS OF PAYMENT:

The lump sum price bid shall include the cost of furnishing all labor, materials, tools, equipment and incidentals necessary to complete and maintain the work of this item. Monthly progress payment will be made under this item in proportion to the amount of work done, as determined by the Engineer.

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**ITEM 685.0715XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 15 MILS THICK
(WET NIGHT VISIBILITY SPHERES)**

**ITEM 685.0720XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK
(WET NIGHT VISIBILITY SPHERES)**

DESCRIPTION:

Under this work the contractor shall furnish and apply epoxy reflectorized pavement markings in accordance with these specifications, the Contract Documents, the NYSMUTCD, or as ordered by the Engineer. Items for Special Markings include stop bars and crosswalks.

Yield line symbols are isosceles triangles with height equaling 1.5 times the base dimension:

A small yield line symbol shall have a base dimension of one foot.

A large yield line symbol shall have a base dimension of two feet.

Yield line symbols are to be installed with the Apex of the triangle oriented towards oncoming traffic.

The epoxy marking material shall be hot-applied by spray methods onto bituminous and portland cement concrete pavement surfaces at the thickness and width shown on the Contract Documents. Following a simultaneous application of Standard Glass Beads (Type 2) and Wet/Night Visibility Beads (Type 1), the cured epoxy marking shall be an adherent reflectorized stripe that will provide wet night retro-reflectivity.

MATERIALS REQUIREMENTS:

Epoxy Paint	727-03
Glass Beads for Pavement Markings	727-05

Reflective Glass Spheres

Retro-reflective beads shall be a double drop system of glass spheres consisting of Standard Beads (Type 2) and Wet/Night Visibility Beads (Type 1) as defined in §727-05 Glass Beads for Pavement Markings.

EPOXY APPLICATING EQUIPMENT

In general, a mobile applicator shall be a truck mounted, self-contained pavement marking machine, specifically designed to apply epoxy resin materials and reflective glass spheres in continuous line patterns. The applying equipment shall be maneuverable to the extent that straight lines can be followed and normal curves can be made in a true arc. In addition, the truck mounted unit shall be provided with accessories to allow for the marking of cross hatching and other special patterns as directed by the Engineer.

At any time throughout the duration of the project, the Contractor shall provide free access to his epoxy applying equipment for inspection by the Engineer or his authorized representative.

The Engineer may approve the use of a portable applicator in lieu of mobile truck mounted accessories for use in applying special markings only, provided such equipment can demonstrate satisfactory application of reflectorized epoxy markings in accordance with these specifications.

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Mobile applying equipment shall be capable of installing up to 19 miles of epoxy reflectorized pavement markings in an eight hour day and shall include the following features:

1. Individual tanks for the storage of Part A and Part B of the epoxy resin.
2. Individual tanks for the storage of Standard (Type 2) and Wet/Night Visibility (Type 1) glass spheres. Each tank shall have a minimum capacity of 3000 lbs.
3. Heating equipment of sufficient capacity to maintain the individual epoxy resin components at the manufacturer's recommended temperature for spray application.
4. Individual dispensers for the simultaneous application of Standard (Type 2) and Wet/Night Visibility (Type 1) glass spheres. Each dispenser shall be capable of applying spheres at a minimum rate of 10 lbs/gal of epoxy resin composition.
5. Metering devices or pressure gauges on the proportioning pumps, positioned to be readily visible to the Engineer.
6. All necessary spray equipment, mixers, compressors, and other appurtenances for the placement of epoxy reflectorized pavement markings in a simultaneous sequence of operations as described in Construction Details, D. Application of Epoxy ReflectORIZED Pavement Markings.

CONSTRUCTION DETAILS

A. General

All pavement markings shall be placed as shown on the Contract Documents and in accordance with the New York State, Manual of Uniform Traffic Control Devices (MUTCD).

Before any pavement marking work is begun, a schedule of operations shall be submitted for the approval of the Engineer.

At least five (5) days prior to starting striping, the Contractor shall provide the Engineer with the epoxy manufacturer's written instructions for use. These instructions shall include, but not be limited to, material mixing ratios and application temperatures.

When pavement markings are applied under traffic, the Contractor shall provide all necessary flags, markers, signs, etc. in accordance with the MUTCD to maintain and protect traffic, and to protect marking operations and the markings until thoroughly set.

The application of pavement markings shall be done in the general direction of traffic. Striping against the direction of traffic flow shall not be allowed.

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The Contractor shall be responsible for removing, to the satisfaction of the Engineer, all tracking marks, spilled epoxy, and epoxy markings applied in unauthorized areas.

When necessary the Contractor shall establish marking line points at 30 foot intervals throughout the length of the pavement or as directed by the Engineer.

B. Atmospheric Conditions

Epoxy pavement markings shall only be applied during conditions of dry weather and on substantially dry pavement surfaces. At the time of installation the pavement surface temperature shall be a minimum of 50°F and the ambient temperature shall be a minimum of 50°F and rising. The Engineer shall be the sole determiner as to when atmospheric conditions and pavement surface conditions are such to produce satisfactory results.

C. Surface Preparation

The Contractor shall clean the pavement and existing durable markings to the satisfaction of the Engineer.

Surface cleaning and preparation work shall be performed only in the area of the epoxy markings application.

At the time of application all pavement surfaces and existing durable markings shall be free of oil, dirt, dust, grease and similar foreign materials. The cost of cleaning these contaminants shall be included in the bid price of this item.

In addition, concrete curing compounds on new portland cement concrete surfaces and existing painted pavement markings on both concrete and bituminous pavement surfaces shall be cleaned and paid for in accordance with §635 Cleaning and Preparation of Pavement Surfaces for Pavement Markings.

D. Application of Epoxy ReflectORIZED Pavement Markings

Epoxy reflectORIZED pavement markings shall be placed at the width, thickness, and pattern designated in the Contract Documents.

Marking operations shall not begin until applicable surface preparation work is completed and approved by the Engineer, and the atmospheric conditions are acceptable to the Engineer.

Pavement markings shall be applied by the following simultaneous operation:

1. The pavement surface is air-blasted to remove dirt and residues.
2. The epoxy resin, mixed and heated in accordance with the manufacturer's

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recommendations, is uniformly hot-sprayed onto the pavement surface at the minimum specified thickness.

3. Standard (Type 2) and Wet/Night Visibility (Type 1) reflective glass spheres are injected into or dropped onto the liquid epoxy marking. Standard beads (Type 2) shall be applied first immediately followed by the application of Wet/Night Visibility beads (Type 1). Each type shall be applied at a minimum rate of 10 lbs/gal of epoxy resin (minimum total application = 20 lbs/gal).

E. Defective Epoxy Pavement Markings

Epoxy reflectORIZED pavement markings, which after application and curing are determined by the Engineer to be defective and not in conformance with this specification, shall be repaired. Repair of defective markings shall be the responsibility of the Contractor and shall be performed to the satisfaction of the Engineer as follows:

1. Insufficient film thickness and line width; insufficient glass bead coverage or inadequate glass bead retention.

Repair Method. Prepare the surface of the defective epoxy marking by grinding or blast cleaning. No other cleaning methods will be allowed. Surface preparation shall be performed to the extent that a substantial amount of the reflective glass spheres are removed and a roughened epoxy marking surface remains.

Immediately after surface preparation remove loose particles and foreign debris by brooming or blasting with compressed air.

Repair shall be made by restriping over the cleaned surface in accordance with the requirements of this specification and at the full thickness indicated on the Contract Documents.

2. Uncured or discolored epoxy*; insufficient bond (to pavement surface or existing durable marking).

Repair Method. The defective epoxy marking shall be completely removed and cleaned to the underlying pavement surface in accordance with the requirements of Section 635 - Cleaning and Preparation of Pavement Surfaces, at the Contractor's expense.

The extent of removal shall be the defective area plus any adjacent epoxy pavement marking material extending three feet in any direction.

After surface preparation work is complete, repair shall be made by reapplying epoxy over the cleaned pavement surface in accordance with the requirements of this specification.

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*Uncured epoxy shall be defined as applied material that fails to cure (dry) in accordance with the requirements of §727-03 Epoxy Paint; or applied material that fails to cure (dry) within a reasonable time period under actual field conditions, as defined by the Engineer.

Discoloration shall be defined as localized areas or patches of brown, grayish or black colored epoxy marking material. These areas often occur in a cyclic pattern and often are not visible until several days or weeks after markings are applied.

Other defects not noted above, but determined by the Engineer to need repair, shall be repaired or replaced as directed by and to the satisfaction of the Engineer.

All work in conjunction with the repair or replacement of defective epoxy reflectorized pavement markings shall be performed by the Contractor at no additional cost to the State.

METHOD OF MEASUREMENT

Pavement striping (regular lines, cross hatching and special markings) will be measured in feet along the centerline of the pavement stripe and will be based on a 4 inch wide stripe. Measurement for striping with a width greater than the basic 4 inches, as shown on the plans or directed by the Engineer, will be made by the following method:

$$\frac{\text{Plan Width of Striping (inches) X Feet}}{4 \text{ inches}}$$

BASIS OF PAYMENT

The accepted quantities of markings will be paid for at the contract unit price, which shall include the cost of furnishing all labor, materials and equipment to satisfactorily complete the work. The cost for maintaining and protecting traffic during the marking operations shall be included in the price bid. The cost of removal of concrete curing compounds and existing pavement markings will be paid under separate items and are not included in this item.

No payment will be made for the repair or replacement of defective epoxy reflectorized pavement markings.

<u>PAY ITEM NO.</u>	<u>DESCRIPTION</u>	<u>PAY UNIT</u>
685.07150110	White Epoxy Reflectorized Pavement Stripes – 15 mils	Foot

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685.07150210	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Letters - 15 mils	Each
685.07150310	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Symbols – 15 mils	Each
685.07150410	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Cross Hatching -15 mils Thick	Foot
685.07150510	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Stripes (Special Markings) 15 mils Thick (Wet Night Visibility Spheres)	Foot
685.07150610	(Wet Night Visibility Spheres) Yellow Epoxy ReflectORIZED Pavement Stripes – 15 mils	Foot
685.07150710	(Wet Night Visibility Spheres) Yellow Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 15 mils Thick (Wet Night Visibility Spheres)	Foot
685.07150810	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Yield Line Symbols - Small - 15 mils	Each
685.07150910	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Yield Line Symbols - Large - 15 mils (Wet Night Visibility Spheres)	Each
685.07200110	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Stripes – 20 mils	Foot
685.07200210	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Letters – 20 mils	Each
685.07200310	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Symbols – 20 mils	Each
685.07200410	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 20 mils Thick (Wet Night Visibility Spheres)	Foot
685.07200510	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Stripes (Special Markings) 20 mils Thick (Wet Night Visibility Spheres)	Foot

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685.07200610	Yellow Epoxy ReflectORIZED Pavement Stripes – 20 mils (Wet Night Visibility Spheres)	Foot
685.07200710	Yellow Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 20 mils Thick (Wet Night Visibility Spheres)	Foot
685.07200810	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Small - 20 mils (Wet Night Visibility Spheres)	Each
685.07200910	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Large - 20 mils (Wet Night Visibility Spheres)	Each

LPM

CHAPTER 12

CONSTRUCTION CONTRACT REQUIREMENTS

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NOTE: This Chapter has associated appendices and forms at:
<https://www.dot.ny.gov/plafap>

The web addresses for hyperlink words referenced throughout this Chapter (except LPM Chapter links) are on the last page under REFERENCE.

Appendices

Appendix

- 12-1 CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-2 ADDITIONAL CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-3 CONSTRUCTION MANAGEMENT PLAN**
- 12-4 PUBLIC INTEREST FINDING, INSTRUCTIONS, SAMPLE LETTER**
- 12-5 TRANSMITTAL OF CONTRACT BID DOCUMENTS AND PLANS, SPECIFICATIONS, AND ESTIMATE LETTER**
- 12-6 CONTRACT BID DOCUMENTS – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) - CHECKLIST**
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- 12-8 NYSDOT SHELF NOTES**
- 12-9 CERTIFICATION FOR PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)**
- 12-10 DBE COMMITMENT (Prior Appendix 14-9)**

12.1 INTRODUCTION

This Chapter describes the requirements that apply to construction contracts advertised, bid, and awarded by Sponsors. The requirements are from the United States Code of Federal Regulations (CFR), specifically Title 23, Highways, and Title 49, Transportation. Sponsors must adhere to the requirements of both CFR Titles 23 and 49 when using federal funds. [Chapter 3](#) of the Local Projects Manual (LPM) provides additional information on the Federal Highway Administration (FHWA) funded programs and eligibility.

12.2 PROJECT MANAGEMENT

12.2.1 Construction Management Plan (CMP)

As stated in [Chapter 2](#) of the LPM, NYSDOT requires all Sponsors to have a written Construction Management Plan (CMP) detailing how the construction contract will be administered. The plan describes how the Sponsor plans to provide adequate supervision and inspection, including materials inspection and acceptance, and independent quality assurance to ensure projects are completed in conformance with the approved plans and specifications.

The CMP is part of the overall Project Management Plan (PMP) (see [Chapter 2](#)). Title **23 CFR 635.105(c)(4)** requires a Sponsor to provide a full-time employee to be in responsible charge of the project even if using consultants to provide engineering and construction inspection services or project management. This full-time employee is referred to as the Project Manager (PM). The PM reports to the Responsible Local Official (RLO), who has ultimate oversight and responsibility for the project.

The PM and the RLO may be the same individual if the RLO has project management experience. However, since each Sponsor has different resources and each construction project is different, the minimum requirements to be included in each CMP are noted in Appendix 12-3.

If the CMP is not approved before letting, between contract letting and contract award, the Sponsor's PM, Engineer-in-Charge (EIC), Inspector(s), and the Regional Local Projects Liaison (RLPL) shall meet to modify the CMP to include information initially not available to the Sponsor.

The CMP should be updated to include a list of individuals involved, their qualifications, responsibilities, and supervision hierarchy. The CMP may be modified by agreement between the contractual parties as necessary due to personnel changes, changed conditions, scope changes, schedule changes, or other reasons. See Appendix 12-3 for the CMP template. NYSDOT must approve the CMP before contract award.

12.2.2 Combination of Two or More Projects for Bidding Purposes

Title **23 CFR 635.111** permits two or more federal-aid and state-aid financed projects to be tied (combined) for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. All proposals submitted for tied projects must contain separate engineering shares for each project. Typically, the combination of projects is predetermined at the beginning of the project, with inclusion in the Project Management Plan. Care should be taken in determining the combination of the projects so that one will not delay the progress of the other (e.g., environmental issues, right-of-way concerns, schedule, funding availability). The Sponsor will coordinate the combination of two or more projects with the RLPL.

12.2.3 Bundling of Projects

Projects can be bundled for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. Bundled projects must have an independent utility with an independent logical termini and do not rely on each other to be completed. This bundling is typically determined and combined as a single contract package at PS&E. In the event that a bundled project includes both a federal-aid funded project and a state-aid funded project, the entire bundled project will need to meet federal contract requirements, which include compliance with Buy America, DBE, and Federal Prevailing Wage Rates. NEPA re-evaluation prior to construction authorization will only be required on the federally funded projects included.

All proposals submitted must contain separate bid prices for each project. It will be vital to track the expenses to the separate engineering shares to ensure no federal funds are expended on any of the state-funded projects included. Reimbursement requests will need to be submitted clearly separating the items for each project/engineering share (including lump sum items.) If federal aid is expended on a state-funded project, then that project would need to be in compliance with all federal regulations, including NEPA.

12.3 CONTRACTOR'S BID PROPOSAL PACKAGE CONTENTS

Sponsors can begin preparing the Contractor's Bid Proposal Package as soon as they have received federal authorization for Detailed Design. This section addresses the major topics covered in the Contractor's Bid Proposal Package. Sponsors must ensure that they use the most recent version of Appendices 12-1 and 12-1A and that the package is organized sequentially. Appendix 12-7, Proposal Title Page, Table of Contents, and Project Title Sheet should be included. Appropriate Shelf Notes to be added can be obtained from the RLPL. See Appendix 12-8 for a list.

The contract plans (if applicable), specifications, and estimate (PS&E) are the outcome of the design stage. It is a summary of the final design information necessary for contract advertisement.

- **For contracts off the State Highway System or National Highway System (NHS)** - The Sponsor must document in writing to the RLPL that all requirements and appropriate appendices were included in the contract bid documents.
- **For contracts on the State Highway System or NHS** - Contract bid documents must be submitted to the RLPL for a completeness review and approval by the Regional Director (RD) and/or FHWA prior to contract advertisement.
- See Project Development Manual (PDM) Exhibit 4-2 and Exhibit 4-3 for approval requirements.

The Contract Bid Document Transmittal Letter (see Appendix 12-5) is used to transmit to NYSDOT all required documents and information necessary to progress the project to the construction phase. The Sponsor provides the completed Contract Bid Documents – Plans, Specifications, and Estimate (PS&E) Checklist (see Appendix 12-6) and PS&E Certification (Appendix 12-9) to NYSDOT for review. It is recommended that the documentation associated with NEPA Re-Evaluation also be submitted with the Contract Bid Documents. Refer to Appendix 11 of the PDM.

Appendix 12-2 Additional Construction Contract Requirements must be included in their entirety in all federally aided construction contract bid proposals that do not use NYSDOT Standard Specifications. See LPM [Chapter 9](#) Section 9.3 Construction Specifications for additional information.

12.3.1 Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements

Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements, contain sworn written statements from the contractor to the Sponsor regarding conditions set by the Sponsor. Appendices 12-1 and 12-1A, in their entirety, must be included in all construction contract bid proposals. By signing the Combined Certification Form of Appendix 12-1A, the contractor certifies that the contents are true.

12.3.1.1 Non-Collusive Bidding and Other Certifications

Collusion is defined as any activity that artificially affects prices when bidding on a contract or activity that restricts competition among bidders or potential bidders by exchanging or sharing information with firms presumed to be competing for the same contract. Title **23 CFR 635.112(f)**; **New York State Finance Law (SFL) Article 9, §139-d** and **General Municipal Law (GML) Article 5A, §103-d** require non-collusive bidding and other certifications in all construction contracts. The above laws require bidders to certify that the bid submitted was arrived at without resorting to any collusive bidding practices.

Additionally, federal law requires bidders to certify that they are eligible to compete for contracts under federal regulations and are not under the sanction of any federal agency, nor are any sanctions pending against the firm or owner of the firm. Title **2 CFR 1200** also requires the bidder to certify that they have not been subject to legal action regarding fraud or misconduct.

A sample signature page (see Appendix 12-1A, Non-Collusive Bidding Certifications) allows for one signature to provide multiple certifications. NYSDOT recommends using this form to simplify signing for various certifications for the same contract.

12.3.1.2 Report of Violations of Non-Collusive Bidding or Other Prohibited Contract Activities

The laws noted in the **Non-Collusive Bidding Requirements** section encourage any person with knowledge of collusive bidding or other misconduct by others to report possible violations to the appropriate federal and/or state authorities. Reporting Violations of Non-Collusive Bidding Procedures Misconduct or Other Prohibited Contract Activities provides information on how to report such activities; and must be submitted with all federal-aid construction contracts.

12.3.1.3 Certification for Federal-Aid Contracts: Lobbying Disclosure

Title **23 CFR 635.112(g)** requires contractors or firms intending to conduct business with the federal government or participate in contracts funded with federal aid to disclose all lobbying activities.

12.3.1.4 Required Contract Provisions for Federal-Aid Construction Contracts (FHWA 1273)

All federal aid highway contracts are bound by various federal laws, rules, regulations, and presidential executive orders. These requirements address issues such as:

- General contract administration,
- Non-discrimination,
- Non-segregated facilities,
- Payment of predetermined minimum wage,
- Statements and payrolls,
- Records of materials,
- Supplies and labor,
- Subletting and assigning of the contracts,
- Safety and accident prevention,

- False statements concerning highway projects,
- Clean air and water pollution control,
- Contractor lobbying activities; and
- Other aspects of the contract and/or contractor responsibilities.

[FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts](#) includes detailed descriptions and explanations of these requirements and must be included verbatim in all federal aid highway contract packages (see Appendix 12-1).

12.3.1.5 Offer Disclosure of Prior Non-Responsibility Determinations

As part of the Contractor's Bid Proposal Package, **SFL Article 9, §139j** and **139k** require contractors to complete the Offerors Disclosure of Prior Non-Responsibility Determinations form affirming that all information provided to the Sponsor is complete, true, and accurate. The form must be completed and submitted by the individual or entity seeking to enter into a Procurement Contract, Supplement or Change Order.

12.3.1.6 Contract Bonds

GML Article 5A, §103-f, and **Standard Specifications §103-03** require the contractor to provide the Sponsor with a Faithful Performance Bond and a Labor and Material Bond from a Surety Company. The contractor shall procure and deliver bonds to the Sponsor and maintain them at their own expense and without expense to the Sponsor until final contract acceptance by the Sponsor. See the Standards Specifications noted for additional information.

12.3.1.7 Bid Deposit

Bidders must submit a bid bond with each proposal for a federally aided contract. The bid bond guarantees that the bidder will enter a contract with the Sponsor for work if a Sponsor accepts a bidder's proposal. Each proposal shall be accompanied by a certified check or a bank cashier's check for a specified amount payable to the Sponsor (see NYSDOT's **Standard Specifications §102-06** and **GML, Article 5A, §102**). Bid deposits will be returned within 30 days after award to non-awarded bidders.

12.3.2 Civil Rights Requirements

12.3.2.1 Disadvantaged Business Enterprise (DBE) Participation

Under **49 CFR 26**, the Sponsor will ensure that the contract includes a Disadvantaged Business Enterprise (DBE) participation goal in accordance with NYSDOT's current [DBE Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. When a construction contract is funded wholly or partially with federal funds, only a DBE goal is assigned to the contract; no other State or local business enterprise goals (no M/WBE goal) can be assigned. The DBE Goal Setting Procedures (Local Program) on the NYSDOT Office of Diversity and Opportunity website linked below detail how a DBE Goal is to be set on local projects. As referenced in the procedures; to set the DBE goal, Sponsors will use the table of Construction Contract Groups, Multi-Regional (Market Area) Map, and the Baseline DBE Goal Selection Chart in the Goal Setting Tools. These forms and instructions are found on NYSDOT's Office of Diversity and Opportunity [website](#).

12.3.2.1.1 Instructions to Bidders Regarding DBE Participation

NYSDOT Standard Specification §102-12 (DBE Participation Package), indicates that all bidders shall submit a complete DBE Participation Package with their proposal. The DBE Participation Package shall include confirmed DBE commitments; DBE confirmation on provided forms (i.e., AAP 20, AAP 22, and AAP23), for each DBE firm for the kind and amount of work shown in the Bidder's commitments; and good faith effort documentation (if required). No additions, substitutions or deductions to the DBE commitments identified at time of letting will be considered as part of the DBE Participation Package. See Appendix 12-10 DBE Commitment AAP 14LL (previously Appendix 14-9) to assist the Sponsor in collecting the information from proposed bidders.

In addition, per 49 CFR 26.11, all Bidders shall submit with their bid proposal a Bidder's List (i.e., CONR 80LL Bidder's List Appendix 12-11) which contains information for all Subcontractors, both DBEs and non-DBEs, who provided quotes on the contract. The Bidder's List shall include the Subcontractor's name, work code applicable to each scope of work the Subcontractor sought to perform in its quote, and additional Subcontractor information. Failure to submit the required Bidders List information may result in rejection of the bid.

12.3.2.2 Minority and Women-Owned Business Enterprises (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) Programs

All contracts entered into by the Sponsor that is wholly funded with state funds must be assessed to determine appropriate M/WBE and SDVOB goals. For detailed information on M/WBE and SDVOB goal setting, see LPM [Chapter 19](#) Appendix 19-1 and 19-5.

12.3.2.3 Equal Employment Opportunity (EEO) Requirements

Per Title **41 CFR 60** and **23 CFR 230**, the Sponsor will ensure contracts with an Engineer's Estimate of \$10,000 or more include EEO workforce utilization goals. Their contractor shall not discriminate against any employee or applicant for employment. EEO utilization refers to workforce makeup, including women and minorities. The contract goal for minorities varies; it is dependent upon the county or counties in which the work is located. The female EEO participation goal is 6.9% throughout the State of New York. EEO requirements apply to prime contractors and their subcontractors. See Appendix 12-1.

12.3.2.4 Civil Rights Monitoring and Reporting

All civil rights reporting is to be performed utilizing NYSDOT's approved civil rights reporting software, EBO (Equitable Business Opportunities Solution). Sponsors must submit an EBO access form to the RLPL with their contract bid. Information concerning EBO is found online at <https://www.dot.ny.gov/dotapp/ebo>. Sponsors should contact their RLPL for additional assistance with EBO.

12.3.2.5 Title VI Assurances

The Title VI Assurances contained in *APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)* must be physically inserted into all federal aid contracts and subcontracts. Therefore, it may not be included by reference.

12.3.3 Other Requirements

12.3.3.1 Authority Delegation

Locally administered federal aid transportation projects will use the current NYSDOT Standard Specifications detailed in LPM [Chapter 9](#) Section 9.3. Modifications to the specifications will require written approval from NYSDOT. See [Chapter 9](#), Section 9.3.3 for more information on special specifications.

NYSDOT Standard Specifications refer to NYSDOT employees (Chief Engineer, Deputy Chief Engineer Structures, etc.) and functional units (Structures, Traffic, and Safety, etc.) to provide for approvals or to perform functions. Sponsors may or may not have access to these resources. Depending on NYSDOT's level of oversight and/or capacity to perform the work, functional unit actions identified in NYSDOT specifications may need to be performed by contract. For example, subsurface exploration would be performed by an approved Geotechnical Consultant if NYSDOT's Geotechnical Engineering Bureau does not have the capacity for the necessary work. Costs and confirmation of availability must be identified in Schedule A of the State Local Agreement before scheduling NYSDOT technical services.

Approval authority is delegated to the Responsible Local Official (RLO) by Municipal Resolution attached to the State-Local Agreement. If the RLO is not a Licensed Professional Engineer, the RLO will recommend the plans, specifications, and estimate based on certification provided by a Licensed Professional. These delegated authorities, approvals, and functional unit actions or subcontracting shall be approved by the RLPL and documented in the Project Management Plan and the Construction Management Plan.

12.3.3.2 Insurance Provisions

The following insurance provisions are required when contractors, subcontractors, and their suppliers intend to conduct business in New York State:

- Workers' Compensation
- Disability Insurance
- Commercial General Liability Insurance
- Commercial Automobile
- Umbrella or Excess Liability
- Special Protective and Highway Liability

Sponsors may require other insurances, depending on the work being performed, including Professional Liability/Errors and Omissions, Railroad Protective, Marine Protection and Indemnity, Pollution Liability, and Builder's Risk.

All required insurance policies, except worker's compensation and professional liability, shall be endorsed to provide coverage to "The Sponsor, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and any consultants working for or on the project, and their agents or employees." See NYSDOT's **Standard Specifications §107-06** for more details.

12.3.3.3 Prevailing Wage Rates, Use of Convict Labor and Materials

Federal and state contracts must include requirements regarding prevailing wage rates, various employment practices, and the use of convict-produced materials (see NYSDOT **Standard Specifications §102-10**).

Federal wage rates must be obtained online from the official federal contracting [Wage Determinations Online website](#). The federal wage rates must be physically inserted into the contract proposal. The federal wage rates must be updated by addendum within 10 days or more before the letting,

New York State prevailing wage rates can be found online at the [New York State Department of Labor's website](#). A Prevailing Rate Case number (PRC) will be issued. If the same request is submitted multiple times, the Sponsor will be assigned a different PRC each time for the same project. Only the first four pages of the most current state wage rates, including the PRC number, need to be included in the proposal. Contractors are obligated to pay the higher of the two as both are stated as minimum rates.

12.3.3.4 Buy America Requirements and Waivers

Title **23 CFR 635.410, 23 USC 313, and the Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law's (BIL)** require all bidders for federal aid contracts to submit bids based on furnishing domestic materials per Standard Specifications §106-11 *Buy America*. The contract will be awarded to the bidder who submits the lowest total bid based on the Buy America requirements as detailed in Standard Specifications §106-11 *Buy America*. This includes any federal aid in any project phase regardless of whether federal aid will be applied to construction. Buy America also applies to general utility installations and municipal utilities if federal funds are involved in any project phase.

At the request of the Sponsor, NYSDOT may request from FHWA a waiver of the provisions of this section if it meets the waiver requirements as noted in Standard Specifications §106-11 *Buy America*. The submittal of a waiver request requires an extensive review and approval by FHWA and does not guarantee that a waiver will be granted.

A Sponsor may use the alternative bidding procedure to justify the use of foreign materials without requesting a waiver. Under this procedure, the total project is bid with two alternatives: one which is based on foreign source materials while the second alternative requires domestic materials. All bidders must submit a bid using domestic source materials and have the option of submitting a bid using foreign source materials. The use of foreign products is justified if the lowest total bid with domestic products is at least 25 percent more than the lowest bid with foreign source products. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for items with domestic materials detailed in Standard Specifications §106-11 *Buy America*.

12.3.3.5 Changed Conditions and Disputed Work Provisions

Title **23 CFR 635.109**, "Standardized Changed Conditions Clauses," requires all FHWA funded contracts let by NYS agencies, municipalities, and/or public authorities to provide processes for equitable contract adjustments and contract disputes. Title **23 CFR 635.109** also contains three contract clauses (found in NYSDOT's **Standard Specifications §104-03, Standard Specifications §104-04, and Standard Specifications §104-05**) which must be included verbatim in each federal aid construction contract. These clauses are included in all federally funded local projects by reference to the NYSDOT Standard Specifications.

12.3.3.6 Retainage Provisions

SFL Article 9, §139-f, and GML Article 5-A, §106-b does not require NYSDOT and Sponsors to hold retainage from contractors or permit the contractor to withhold retainage except for work not completed on NYSDOT administered contracts. Therefore, the limits on retainage as provided in

GML Article 5-A, §106-b cannot be applied by the Sponsor. In accordance with Standard Specification 109-07 Prompt Payment, the Sponsor must ensure that the Contractor does not hold any. See [LPM Chapter 5.3.1.4](#) Retainage Policy.

12.3.3.7 Prompt Payment Provisions

GML Article 5-A, §106-b, and **SFL Article 9, §139-f** require the contractor to pay their subcontractors and suppliers within seven (7) calendar days of receipt of payment from the Sponsor and provide for interest on late payments for all public works contracts. See [LPM Chapter 5.3.1.3](#) Prompt Payment Policy. The prime contractor's date of payment to subcontractors is the date that payment is sent to the subcontractors; this date is recorded in EBO. Subcontractors are required to acknowledge these payments in EBO promptly. Contract provisions stating any other payment schedule will not be allowed; contracts cannot supersede State Finance Law. In accordance with Standard Specification §109-07 *Prompt Payment*, the Contractor will not withhold payment to subcontractors or DBE/MBE/WEB/SDVOB's due to disputes about the quantity of work performed. See Construction Administration Manual (MURK Part 1A) for additional information.

12.4 MISCELLANEOUS REQUIREMENTS

12.4.1 Residency and Other Requirements

Title **23 CFR 635.110(b)** prohibits the Sponsor from imposing unusual contract specifications, including requirements for an award or submitting a bid, such as residency requirements or geographical or other restrictions, which tend to restrict competition. Such requirements cannot be part of the solicitation for bids or the bid proposal package nor appear in any advertisement for bids.

12.4.2 Specialized Experience Requirements

The special requirements for determining the lowest responsible bidder should be clear, reasonable, and consistent with standard industry practices. For instance, on a project involving historic preservation, several years of experience in the historic preservation field, or at least three completed historic preservation contracts similar in size and scope would be a reasonable requirement. However, special expertise cannot be written to preclude any bidder from submitting a bid and can only be used to determine the lowest responsible bidder. Below is an example of an appropriate clause for historic preservation work which may be included in a bid proposal package.

Due to the highly sensitive nature of the historic preservation work in this contract, as a condition of the award, bidders must have at least _____ years' experience working with historic (timber, iron, etc.) structures (bridges, buildings, etc.), including work on similar contracts or structures. In addition, the bidder must include a list of current and previously completed historic preservation contracts in its bid package, including the name of the contract owner, a contact person, and telephone number so that references can be verified. The contract will be awarded to the lowest responsible bidder who meets the experience specifications.

12.4.3 Wicks Law Requirements

Known as Wicks Law, **GML Article 5-A, §101** and **SFL Article 9 §135**, applies to State agencies, certain public benefit corporations, municipalities, school districts, and boards of cooperative educational services but does not apply to private building construction. This is a New York State statute, and NYSDOT has no authority to grant waivers. The law applies if a construction contract involves building construction and the total construction contract value exceeds:

- \$3 million in Bronx, Kings, New York, Queens, and Richmond Counties,
- \$1.5 million in Nassau, Suffolk, and Westchester Counties, or

- \$500,000 in all other counties in New York State.

GML Article 5-A, §101 requires the contract owner (Sponsor) to bid and execute separate contracts for general construction, plumbing, heating/ventilating/air conditioning, and electrical components for building construction. For any project which does not meet the above thresholds and is not let with separate contracts, this law applies in the following ways:

- All bidders must submit with their bids a sealed list of the subcontractors that will perform the plumbing, H/V/AC, and electrical work.
- The successful low bidder's sealed list will be opened, and the Contractor is required to use the list of subcontractors unless there is a legitimate construction need to change the subcontractor. The Sponsor's approval is required for a change to be made.
- The sealed lists are returned unopened to the non-selected bidders.

12.4.4 Prequalification

GML Article 5-A, §103 allows political subdivisions (municipalities) with populations over 50,000 to prequalify bidders. The prequalification program establishes guidelines governing the qualifications of bidders for construction/procurement contracts. These programs are allowed if the Sponsor maintains an appropriate list of qualified bidders who meet the Sponsor's established standards. Indication of the use of a pre-qualified bidder must be noted in the advertisement of the project. The established standards shall consider the prospective bidders' experience and the past performance of work completed by the prospective bidders as well as:

1. The prospective bidders' ability to undertake the type and complexity of work,
2. The financial capability, responsibility, and reliability of the prospective bidders for such type and complexity of work,
3. The record of the prospective bidders in complying with existing labor standards and maintaining harmonious labor relations,
4. The prospective bidders' compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with disadvantaged businesses through joint ventures of subcontractor relationships; and
5. The record of the prospective bidders in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidders' [Workers Compensation Experience Modification Rate](#) for each of the last three years.

The Sponsor's prequalification process must have a documented appeal process for firms denied a place on a pre-qualified list. In addition, NYSDOT must review and approve any prequalification provisions.

12.4.5 Project Labor Agreement

NYS Labor Law Article 8, §222 allows Sponsors to use a Project Labor Agreement (PLA) when it has been determined that the Sponsor's interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud, and corruption, and other considerations such as the impact of delay, and the possibility of costs savings are best met by requiring a PLA. Project Labor Agreement shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization. The trade labor organization is the collective bargaining representative for all persons who will perform work on a public works project. Only contractors and subcontractors who sign a pre-negotiated agreement with the trade labor organization can perform project work.

It should be noted that any project undertaken with a PLA shall:

- For design, be subject to the review and approval of the Sponsor; and the design and construction standards are subject to the review and approval of NYSDOT,
- Contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment and a performance bond for the faithful performance of the project,
- Participate in an apprentice training program if the project exceeds the noted values under **NYS Labor Law Article 8, §222**.

The use of a PLA must :

- Be consistent with **23 United States Code (USC) 112**,
- Lead to a more effective use of federal funds; and
- Be in compliance with all **Title 23** and **Title 49 USC** and **CFR** requirements.

To accomplish consistency and compliance with the referenced codes, a complete study, analysis, and report must be prepared by an independent consultant retained by the Sponsor who is experienced in the development and implementation of PLA's and has not been retained to perform the design of the project. The consultant must conduct a thorough project analysis of the costs/benefits of a PLA and document specific facts and figures in the Due Diligence Impact Study Report.

NYSDOT will review all PLA's prior to submitting to FHWA for approval, including Design-Build. The final report must be provided to the RLPL to be included in the project files.

The NYS Office of General Services (OGS) has a contract for Project Labor Agreement Services that Sponsors may use to select a firm. The Sponsor must use the mini-bid process to solicit a cost estimate from all on the list before selecting one firm. If a Sponsor uses the OGS Contract, the federal requirements as found in Appendices 12-1 and 12-1A must be incorporated into the contract. Therefore, the Sponsor would be eligible for reimbursement only if the federal requirements are incorporated into the contract.

12.4.6 Design-Build

The "[New York City Public Works Investment Act of 2019](#)" authorized the New York City's Department of Design and Construction and Department of Transportation to undertake public work projects pursuant to project labor agreements that cost \$10 million or more, use of the alternative delivery method known as Design-Build contracts. The RLPL will coordinate contact and consultation for the procedures to be followed with the NYSDOT Project Management Office. No other Sponsor is permitted at this time to utilize Design-Build as an alternative delivery method.

12.4.7 Warranties and Specialty Items

Title 23 CFR 635.413 generally prohibits the Sponsor from requiring a contractor to warrant or guarantee its overall workmanship for some time after the contract work is accepted. Warranties and guarantees are not allowed on federal aid contracts and should not be part of the contract bid proposals. Warranties for routine maintenance items not within the control of the contractor are prohibited. Specific Sponsor requests to use warranty clauses must be submitted to the RLPL for NYSDOT approval before Contract Bid Document Package submission. Standard manufacturers and suppliers' warranties on installed equipment and materials are allowed under federal regulations without additional approval. See **Standard Specifications §105-18** and **§105-19** for more information.

12.4.8 Training and Apprenticeship Requirements

Training is one of the Civil Rights activities that may be used to address the under-utilization of minorities, females, and economically disadvantaged persons in highway construction and engineering contracts. The Sponsor must include Item 691 Training and Apprenticeship Requirements if the construction cost is estimated above \$5M. It should be noted that if the construction cost is below \$5M and there is an opportunity for training, the item may be included. The program requirements 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. The review and approval processes are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate with their RLPL. See Highway Design Manual (HDM) 21.4.3.2 Training Requirements.

12.4.9 NYSDOT Oversight

There are times where different phases of the project, such as preliminary design, detailed design, right-of-way, construction inspection, or construction, are not funded with federal funds. If the construction phase is not advanced with federal funds, NYSDOT must provide oversight and ensure compliance in the areas of Environmental Commitments, Right-of-way (ROW) Requirements/Acquisition, and Buy America provisions.

12.5 CONTRACTING METHODS

Title **23 CFR 635** describes federal regulations governing construction contracts let by a Sponsor for which the Sponsor anticipates federal reimbursement. Title **23 CFR 635.104(a)** requires construction contracts to be awarded to the lowest responsible bidder, as determined by a competitive bidding process. The Sponsor must comply with federal aid competitive bidding requirements. NYSDOT is the primary recipient of FHWA funding. When receiving federal funds, NYSDOT must monitor and assure compliance with federal regulations on contracts initiated by a project Sponsor or subcontracts initiated by a contractor.

Failure to comply with all federal and state laws, rules, regulations, and federal presidential and state gubernatorial executive orders may result in the loss of federal aid and removal of NYSDOT and/or FHWA participation from the project. In addition, the State may deduct other state or federal aid due to the Sponsor's future payments. Refer to [Chapter 4](#), Local Project Agreements, for rules and regulations regarding possible repayment of funds to NYSDOT. For additional requirements regarding construction contract administration and compliance, see [Chapter 15](#).

Costs found to be ineligible after payment was made to the Sponsor must be repaid to New York State. NYSDOT will reduce current or future reimbursement claims on the same or other projects the Sponsor may have with NYSDOT if the Sponsor fails to repay.

12.5.1 Force Account Work by Sponsors

Title **23 CFR 635.104(a)** requires competitive bidding for construction contracts unless provided in **23 CFR 635.104(b)**, some other method is more cost-effective. Force Account Construction by the Sponsor is one method utilized. Title **23 CFR 635.201-205** documents the federal requirements for Force Account Construction. NYSDOT or FHWA must approve all requests to use Force Account Work on local let construction projects.

12.5.1.1 Public Interest Finding

Title **23 CFR 635.104(b)** provides the option for a Sponsor to determine if it is more cost-effective to use its resources to perform the work adequately than competitive bidding on a local-let, federally aided construction contract (i.e., Force Account Work). The Sponsor must submit to the RLPL in writing a request justifying why "no-bid force account work" is necessary. This can be justified by showing how it is cost-effective to use the Force Account method vs. competitive bidding (e.g., during emergency conditions). This request is called a Public Interest Finding (PIF).

- For projects OFF the National Highway System (NHS), the PIF will be submitted to NYSDOT for approval.
- For projects ON the NHS, the PIF will be submitted by NYSDOT to FHWA for approval. See Appendix 12-4 for the PIF form, instructions, and transmittal letter.

12.5.1.2 Use of Sponsors' Equipment or Materials

Generally, Sponsors cannot require the prime contractor to use the Sponsor's equipment or materials as a condition or pre-condition of awarding the contract. However, if documented in the PIF, exceptions may be allowed by NYSDOT or FHWA. Equipment must be acquired through competitive bidding or produced by municipal forces. The Contractor must have the option to use their own equipment. Cost for equipment must be based on rental rates or unit prices, and points of availability shall be documented in the Contract Bid Package.

Note: Sponsors cannot profit from the rental of their equipment or materials.

12.5.2 Using Alternate Bidding

If the Sponsor utilizes an alternate bid process to stay within budget limits, the alternate bid process must be clearly described in the bid proposal. A Sponsor cannot use an alternate process where the Sponsor may arbitrarily choose from among the alternate bid items. An arbitrary process may create an impression of impropriety. FHWA has accepted the method described in the Alternate Bidding Section of this chapter.

A Sponsor may choose alternate bidding to maximize the benefits of the funding available for a contract. In general, the concept allows for Contractors to bid on the elements of the basic contract scope (base bid) first as well as submit bids on work outside of the basic contract scope: the alternate bid items. These alternates can be either additions or deletions from the basic contract scope. Bids on the basic scope of the contract and the alternate items are submitted at the same time and opened at the same time.

If the Sponsor receives a bid on the basic scope which is less than the Engineer's Estimate for the basic scope, bids on the alternate items are considered according to a predetermined order of priority, so long as the total bid price remains under the total contract budget (see Scenario #1). Conversely, if all bids exceed the Engineer's Estimate, Sponsors may delete alternate bid items, subject to a priority ranking, to stay within the contract budget (see Scenario #3).

12.5.2.1 Format for Alternate Bidding

The use of alternate bid items is permissible under strict budgetary circumstances. To assure bidders of the integrity of the competitive bid process, the criteria and formula for determining the low bidder in an alternate bid process must be fully and clearly described in the bid proposal documents.

The bid solicitation must advise potential bidders that alternate bidding will be used. Whether adding or deleting alternate items, the Sponsor must prioritize the alternate bid items and follow a rational sequence when selecting the alternate items. The Sponsor is not free to pick and choose among the alternates. The following format must be adhered to.

EXAMPLE: If a budgeted figure cannot be exceeded, the total budget figure should be announced at the public bid opening just prior to opening the bids. The bid proposal should state the criteria on which award will be based as follows:

- If any bids for the base bid plus Alternates 1-3 come under the budget figure, the award will be made based on the base bid plus Alternates 1-3; however,
- If all bids for the base bid plus Alternates 1-3 exceed the budget figure, the award will be based on the base bid plus Alternates 1 and 2; however,
- If all bids for the base bid plus Alternates 1 and 2 exceed the budget figure, the award will be based on the base bid plus Alternate 1; however,
- If all bids for the base bid plus Alternate 1 exceed the budget figure, the award will be based on the base bid only; however,
- If all bids for the base bid exceed the budget figure, the award will be based on the base bid and Alternate 4 (deduct item); however,
- If all bids for the base bid and Alternate 4 (deduct item) exceed the budget figure, the award will be based on the base bid and Alternates 4 and 5 (deduct items); however,
- If all bids for the base bid and Alternates 4 and 5 (deduct items) exceed the budget figure, the award will be based on the base bid plus Alternates 4, 5, and 6 (deduct items)

Scenarios #1, #2, and #3 below illustrate the above example in determining the low bidder when alternate bid items are used.

SCENARIO #1

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$150,000	\$20,000	\$20,000	\$20,000	\$210,000
B	\$170,000	\$15,000	\$ 7,000	\$ 7,000	\$199,000
C	\$185,000	\$17,000	\$10,000	\$ 3,000	\$215,000
D	\$175,000	\$18,000	\$ 5,000	\$15,000	\$213,000

BIDDER B is the low bidder, using base bid plus Alternates 1-3, for a total of \$199,000.

SCENARIO #2

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$196,000	\$ 8,000	\$ 8,000	\$ 8,000	\$220,000
B	\$192,500	\$10,000	\$ 2,000	\$ 8,000	\$212,500
C	\$194,000	\$11,000	\$ 6,000	\$ 9,000	\$220,000
D	\$190,000	\$15,000	\$ 5,000	\$15,000	\$225,000

BIDDER D is the low bidder based on the base bid only. All other applications of the formula exceed the budget figure.

SCENARIO #3

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2		ALT.#3	ALT.#4	ALT.#5	ALT. #6
A	\$220,000	\$ 8,000	\$ 9,000		\$ 8,000	(\$10,000)	(\$10,000)	(\$10,000)
B	\$225,000	\$ 7,000	\$ 7,000		\$ 8,000	(\$ 8,000)	(\$ 7,000)	(\$ 8,000)
C	\$215,000	\$10,000	\$ 7,000		\$ 6,000	(\$10,000)	(\$ 6,000)	(\$ 5,000)
D	\$230,000	\$10,000	\$10,000		\$ 7,000	(\$12,000)	(\$10,000)	(\$ 8,000)

BIDDER C is the low bidder, based on the base bid plus Alternates 4 and 5 (\$215,000 minus \$10,000) (Alt. #4) and minus \$6,000 (Alt. #5), total price \$199,000 following the formula.

12.6 REFERENCES

Federal Laws and Regulations

[USC Title 23](#) United States Code – Title 23 Highways
[USC Title 49](#) United States Code – Title 49 Transportation
[Code of Federal Regulations](#) Code of Federal Regulations
[2 CFR 1200](#) Debarment
[23 CFR 112](#) Letting of Contracts
[23 CFR 230](#) External Federal Highway Programs
[23 CFR 635](#) Construction and Maintenance
[23 CFR 635.104\(a\)\(b\)](#) Method of Construction
[23 CFR 635.105\(c\)\(4\)](#) Supervising agency
[23 CFR 635.109](#) Standardized changed condition clauses
[23 CFR 635.110\(b\)](#) Licensing and qualification of contractors
[23 CFR 635.111](#) Tied Bids
[23 CFR 635.112\(e\)\(f\)\(g\)](#) Advertising for bids
[23 CFR 635.114\(a\)](#) Award of contract and concurrence in the award
[23 CFR 635.201-205](#) Force Account Construction
[23 CFR 635.410](#) Buy America requirements
[23 CFR 635.413](#) Guaranty and warranty clauses
[41 CFR 60](#) (Equal Opportunity Clauses – Compliance Reports
[49 CFR 20.100](#) Conditions on use of funds
[49 CFR 26](#) Disadvantaged Business Enterprises, (DBE)

State Laws and Regulations (State Finance Law, (SFL) & Labor Law)

[Article 9, Section 135](#) Separate specifications for contract work
[Article 9, Section 139-d](#) Statement of non-collusion in bids to the state
[Article 9, Section 139-f](#) Payment on public work projects
[Article 9, Section 139-j](#) Restrictions on contracts during the procurement process
[Article 9, Section 139-k](#) Disclosure of contracts and responsibility of offers
[Article 9, Section 146](#) Certain construction contracts involving steel
[NYS Labor Law, Article 8, Section 222](#) Project Labor Agreements, (PLAs)

General Municipal Laws and Regulations (General Municipal Law (GML))

[Article 5-A, Section 101](#) Separate specifications for certain public work
[Article 5-A, Section 102](#) Deposits on plans and specifications
[Article 5-1, Section 103](#) Political Subdivisions
[Article 5-A, Section 103-d](#) Statement of non-collusion bids
[Article 5-A, Section 103-f](#) Security bonds on municipal projects
[Article 5-A, Section 106-b](#) Payment on public work projects

Other:

FHWA Contract Administration Core Curriculum Manual (Buy America)
<https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>

FHWA Project Labor Agreements
<https://www.fhwa.dot.gov/construction/contracts/100507.cfm>

FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts
<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

MURK Part 1A Contract Administration Manual (CAM)
https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a

New York State Department of Labor's Prevailing Work and Public Wage
<http://labor.ny.gov/workerprotection/publicwork/PWRateSch.shtm>

US Government Wage Determinations
<https://sam.gov/wage-determinations>

Workers Compensation Experience Modification Rate
<http://www.safetymanagementgroup.com/emr-experience-modification-rate.aspx>

APPENDIX 12-1

CONSTRUCTION CONTRACT REQUIREMENTS

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (FHWA Section 1273 X)

A. The prospective bidder certifies to the best of its knowledge and belief that they and their 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 a 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 the 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 Bidder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (FHWA 1273 Section XI)

A. The prospective bidder 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 federally 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.

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

C. The prospective bidder 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 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.

Appendix 12-1.1

FALSE CLAIMS CERTIFICATION (31 USC §3729, NYS Finance Law Article 13)

Under the Federal False Claims Act, 31 U.S. Code §3729, any person or entity who knowingly presents, or causes to be presented to the Federal Government, a false or fraudulent claim for payment or approval is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the Government sustains.

Under the New York State False Claims Act, NYS Finance Law Article 13, any person or entity who knowingly presents or causes to be presented to the State of New York or Local Governments within the State of New York, a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of damages the Government sustains.

“Knowingly” is defined as (1) actual knowledge; (2) acting in deliberate ignorance of the truth or falsity of information; or (3) acting in reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

The Contractor to whom the above-identified contract is to be awarded does hereby certify to the New York State Department of Transportation that it understands the prohibitions under the Federal and New York State False Claims acts and that it has not and will not submit or cause to be submitted any fraudulent claims in the submission of this bid or in connection with the above-identified contract. The Contractor further certifies that it understands retaliatory actions against employees and officers who initiate a *qui tam* (public) action on behalf of the government or cooperate in the investigation of a false claim are prohibited and are subject to an assessment of damages and penalties under the provisions of the Federal and New York State False Claims Acts.

THIS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.

**NON-COLLUSIVE BIDDING CERTIFICATION
(NYS Finance Law §139-d and General Municipal Law §103-d)**

1. By submission of this bid:

(a) 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 its 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 pricelists 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."

**STATE NON-COLLUSIVE BIDDING CERTIFICATIONS MUST BE INCLUDED IN EVERY BID
PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL
SPECIFICATIONS ARE USED.**

NON-COLLUSIVE BIDDING CERTIFICATION (2 CFR 1200)

"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."

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).

FEDERAL NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.

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

**US DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL - FRAUD, WASTE & ABUSE HOTLINE**

The U.S. Department of Transportation (USDOT) Office of Inspector General (OIG) maintains a Hotline for receiving allegations of fraud, waste, abuse, or mismanagement in USDOT programs or operations. Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract-related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the Hotline at 1-800-424-9071, emailing hotline@oig.dot.gov, or writing to the USDOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. Allegations may be reported 24 hours a day, seven days a week by DOT employees, contractors, or the general public.

NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL HOTLINE

The New York State Office of the Inspector General maintains a Hotline for receiving allegations of governmental misconduct. Reports of New York State governmental misconduct may be made in strict confidence to the Toll-Free 24-hour Statewide HOTLINE at 1-800-DO RIGHT (1-800-367-4448), the online complaint form at www.ig.ny.gov or in writing to the New York State Office of the Inspector General, Empire State Plaza, Agency Building 2 - 16th Floor, Albany, New York 12223.

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED
IN EACH BID PROPOSAL.**

GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION

The Contractor shall follow the requirements of NYSDOT Standard Specification §102-11 *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	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	Table	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	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS, AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

GOAL FOR PARTICIPATION OF WOMEN

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

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

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

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

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

ATTACHMENTS

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e). The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

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

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

classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

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

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S.

Department of Labor (US DOL) and FHWA requirements.

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

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

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

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

program and who must be assigned adequate authority and responsibility to do so.

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

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and

women in the area from which the project work force would normally be derived.

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

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

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

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

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

b. The contractor will periodically evaluate the spread of wages paid within each classification

to determine any evidence of discriminatory wage practices.

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities:

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

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

- a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

DOT’s FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

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

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

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

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

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

contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on

a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

- (i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (ii) The classification is used in the area by the construction industry; and
- (iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(4) 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 will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an

authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprourement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

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

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original

handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they

perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in

the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

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

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

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

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of

lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist,

harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any

violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section. * \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of

whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its reprourement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate,

threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

- a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring

leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

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

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

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

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

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

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

contracting officer determines is necessary to assure the performance of the contract.

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29

CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be

performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may

direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier

participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.
- h. A participant in a covered transaction may rely upon a certification of a prospective

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly

enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

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

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

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

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

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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 Part 20, App. A.

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

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

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

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

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

all such recipients shall certify and disclose accordingly.

directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted

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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on

which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

APPENDIX 12-1A

CONSTRUCTION CONTRACT REQUIREMENTS FILLABLE FORMS

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

**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:

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN
EACH BID PROPOSAL.**

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual of Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

NO YES

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j?

NO YES

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

NO YES

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary.)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

NO YES

6. If yes, please provide details below.

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:

(Add additional pages as necessary.)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date:

Signature

Name:

Title:

COMBINED CERTIFICATION FORM

BY EXECUTING THIS DOCUMENT, THE CONTRACTOR AGREES TO:

1. Perform all work listed in accordance with the Contract Documents including all amendments, at the prices bid; subject to the Changed Conditions provisions if applicable,
2. Accompany this proposal with a bid bond, certified check or bank cashier's check for the specified amount of deposit required,
3. All the terms and conditions of the non-collusive bidding certifications required by §139-d of the State Finance Law and 2 CFR Part 1200,
4. Certify, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts-Section X "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion",
5. Certify that no Federal appropriated funds have been paid or will be paid, to any person for lobbying a Federal official or employee, or disclosure was made in accordance with 31 USC 1352 required by FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts-Section XI "Certification Regarding Use of Contract Funds for Lobbying",
6. Attest that its performance of the services outlined in this proposal does not and will not create a conflict of interest with nor position the firm to breach any other contract currently in force with the State of New York,
7. Certify that it understands the prohibitions under the Federal False Claims Act (31 USC §3729) and the New York State False Claims Act (NYS Finance Law Article 13),
8. Certify that all information provided to the Department with respect to the requirements contained in the Procurement Lobbying Law (State Finance Laws §139-j and §139-k) is complete, true and accurate,
9. Affirm, under penalty of perjury, that all the responses provided to the Department with respect to its submitted Form CCA-2 New York State Vendor Responsibility Questionnaire For-Profit Construction, are complete, true, and accurate, and further affirms and acknowledges that it must remain a responsible Contractor throughout the duration of the contract, in accordance with §105-05 Vendor Responsibility,
10. Provide commitments to meet the established DBE goal(s) prior to award or demonstrate good faith efforts to do so,
11. 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 prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the New York State Labor Law.

12. Certify to all other clauses required by this proposal and contained herein.

Dated _____, 20____

Legal Name of person, firm or corporation

By _____
Signature (Title)

(Acknowledgment by Individual Contractor)

STATE OF NEW YORK _____)
COUNTY OF _____) SS:

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

(Acknowledgment by Individual Contractor, If a Corporation)

STATE OF NEW YORK _____)
COUNTY OF _____) SS:

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 of Co-Partnership Contractor)

STATE OF NEW YORK _____)
COUNTY OF _____) SS:

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 _____ for the uses and purposes mentioned herein.

Notary Public

CHAPTER 12, APPENDIX 12-2

ADDITIONAL CONSTRUCTION CONTRACT REQUIREMENTS

**[FOR LOCALLY ADMINISTERED FEDERAL AID CONSTRUCTION PROJECTS
WHICH DO NOT
USE NYSDOT STANDARD SPECIFICATIONS]**

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NOTE: References to actions undertaken by the following: “Commissioner, Office of the State Comptroller, Department, Regional Director, Regional Construction Engineer, Deputy Chief Engineer Construction (DCEC) or State,” unless used in the context of reference to specific state law or regulations will be performed by the project sponsor or their designee.

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LABOR AND EMPLOYMENT

The provisions of NYS Labor Law, as amended, shall be applicable. On contracts financed with Federal Aid, any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements, as contained in **23 CFR 635.117** are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements, or the Davis-Bacon Act, but are more restrictive, shall apply.

The Contractor shall directly employ those members of its own organization. Employee leasing and other similar arrangements under which workers are employed by another organization are not permitted.

No procedures or requirement shall be imposed by any state which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, in the construction of a Federal-Aid project. The selection of labor to be employed by the Contractor on any Federal-Aid project shall be of its choosing.

The Contractor shall not use convict labor unless performed by convicts who are on parole, supervised release, or probation for construction, maintenance or any other purpose at the site or within the contract limits from the time of contract award until contract final acceptance by the Department.

A. Wages. The Department will identify in the contract proposal whether the NYS Department of Labor (NYSDOL) has determined the work under the contract to be prevailing wage eligible, and if so, the Department will provide the Prevailing Rate Case (PRC) number. The PRC number is found on NYSDOL Form PW-200. The Contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. If the contract is prevailing wage eligible, all on-site work shall be paid prevailing wages. When both State and Federal prevailing wages apply, the Contractor shall pay the higher of the combination of the wages and supplemental (fringe) benefits.

The Contractor shall obtain periodic wage rate schedule updates from the NYSDOL. Wage rate amendments and supplements are available on the NYSDOL web site at <https://www.labor.ny.gov/workerprotection/publicwork/PWContents.shtm>. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work. The Contractor shall include the cost of changes in prevailing wages and supplemental (fringe) benefits, over the contract duration, in the contract bid prices.

B. Overtime Dispensation. All bidders, in submitting their bids, should base their bids and work progression on the assumption that Overtime Dispensation pursuant to Article 8 of the New York State Labor Law, for any workers, laborers, and mechanics to work more than 8 hours in any one calendar day or more than 5 days in any one week will not be granted for any operation for the contract duration. Regardless of approval or disapproval of overtime by the NYSDOL, no adjustment will be made in any bid prices.

Subsequent to award, where the contract proposal has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by the NYSDOL, requests for overtime dispensation on certain specific operations.

The Contractor shall submit requests for overtime dispensation to the Department on Form PW-30, Application for Dispensation for Hours, which will be provided by the Engineer upon request. The Department will favorably review applications for overtime dispensation submitted by the Contractor associated with contracts subject to (A+B) Bidding, Incentive/Disincentive (I/D) or Lane Rental work, but the application should not request more than 60 hours per week.

The 60 hours per week may be either six 10-hour days or five 12-hour days. Overtime dispensations will be supported by the Department to advance Department goals and priorities, subject to specific circumstances and conditions associated with each contract.

The Department cannot guarantee that the NYSDOL will grant dispensation from restrictions pursuant to the provisions of Article 8 of the State Labor Law, however, with the Department's certification, it is anticipated that they will act favorably, provided that the Contractor is in compliance with Labor Law requirements at the time of application.

C. Payrolls. The Contractor shall provide the Engineer with weekly certified payrolls from each firm engaged in work during the preceding weekly payroll period performed by prevailing wage eligible workers.

Certified payrolls shall contain for each employee, name, race, gender, home address, an individually identifying number (e.g., the last 4 digits of the employee's social security number), work class, hours worked, wage rate, supplemental (fringe) benefits paid or provided, payroll taxes, withholdings and actual wages paid. Certified payrolls shall not include full social security numbers of employees. Certified payrolls shall be submitted on Form HC-231 for Federal-Aid contracts and Non-Federal-Aid contracts. At the Contractor's option, other payroll formats which supply the required data and certifications may be used. Each certified payroll submitted shall be accompanied by a Statement of Compliance signed by the Contractor. If the firm does not maintain a place of business in New York State and the amount of the contract exceeds \$25,000, payroll records and certifications shall be kept on the worksite.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to NYSDOL or USDOL for purposes of an investigation or audit of compliance with prevailing wage requirements. Contractors may require subcontractors to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Department.

D. Training. An apprentice is defined as an individual who is enrolled in an apprenticeship training program that is registered with the NYS Department of Labor. A list of approved programs is available from the NYS Department of Labor at <https://www.labor.ny.gov/apprenticeship/appindex.shtm>.

A trainee is defined as an individual who is enrolled in an On-the-Job Training (OJT) program that is approved by the Federal Highway Administration (FHWA).

Several sources to obtain training for apprentices/trainees are available. These include:

- A NYSDOT-approved apprenticeship program sponsored by a union or a temporary project level agreement with a union which has a NYSDOL approved apprenticeship program.
- A NYSDOL-approved apprenticeship program sponsored by a contractor.
- A NYSDOL-approved apprenticeship program sponsored by a contractor signatory with an apprenticeship sponsor consortium for certain services.
- An FHWA-approved OJT program (where applicable).

Approved OJT Programs are currently limited to apprentice able occupations as determined by NYSDOL or USDOL.

Training under Training Special Provisions, if required, will be shown in the contract documents. In order to fulfill training requirements required under Training Special Provisions and/or *Equal Employment Opportunity Requirements*, training should begin as early as possible during a construction contract. The Department recommends that all bidders have an approved apprenticeship or OJT program prior to bidding.

The Contractor shall furnish the apprentice/trainee a copy of the program to be followed in providing the training. The Contractor shall provide each apprentice/trainee with a certification

showing the type and length of training satisfactorily completed.

When training is required under *Training Special Provisions* and/or *Equal Employment Opportunity Requirements*, the Contractor shall designate to the Engineer, at the preconstruction meeting, a person (or persons) from its existing workforce as the Trainer and Training Coordinator for any apprentices/ trainees.

The Trainer shall:

1. Be located on the contract site generally on a daily basis; and
2. Be responsible for the day to day supervision and training of persons on the contract; and
3. Be responsible for the preparation and submission of a monthly training progress report, after consultation with designated apprentices/trainees.

The Training Coordinator shall:

1. Be knowledgeable about the contract and the Apprenticeship/OJT programs to be used; and
2. Be responsible for ensuring on-the-job orientation of apprentices/trainees; and
3. Be responsible for ensuring meaningful and effective training for the duration of training.

PURCHASE CONTRACTS WHICH DO NOT INVOLVE INSTALLATION OR LABOR DO NOT REQUIRE WAGE RATES

GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION

The Contractor shall follow *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	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	Table	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	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

GOAL FOR PARTICIPATION OF WOMEN

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

The Department seeks to:

- To ensure nondiscrimination in award and administration of DOT-assisted contracts in the NYSDOT's highway, transit, and airport financial assistance programs,
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts,
- To ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law,
- To ensure that only firms that fully meet the Department's DBE Program eligibility standards are permitted to participate as DBEs,
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts,
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients,
- To assist in the development of firms that can compete successfully in the marketplace outside the DBE program; and
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this subsection to promote the objectives outlined above. The Contractor shall comply with the applicable laws, rules and regulations and the DBE Program Assurances stated below.

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of Federal-Aid 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 Department deems appropriate, which may include, but is not limited to: (1) withholding contract payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Contractor from future bidding as non-responsible. The Contractor shall not use the requirements of these specifications to discriminate against any qualified company or group of companies. These requirements shall be made a part of all subcontracts and agreements entered into as a result of this contract.

A. Disadvantaged Business Enterprise (DBE) Program. The Federal statutory authority for the DBE Program is contained in the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240); the Transportation Equity Act of the 21st Century (TEA-21) Public Law 105-178; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59; the Moving Ahead for Progress in the 21st (MAP-21), (Public Law 112-141); and the Fixing America's Surface Transportation (FAST) Act (Public Law 114-94). New York State has enacted Section 85 of the Highway Law and Section 428 of the Transportation Law. Regulations have been promulgated under 49 CFR 21, 49 CFR 26 and 17 NYCRR §35.

B. DBE Goal. Federal-aid contracts have a single DBE goal. The Department will monitor the Contractor's commitments towards the DBE goal and attainments in accordance with 49 CFR 26.

1. **Established Goal.** The contract participation goal for DBEs is established by geographic location and work type. The goal is stated in the proposal and remains in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that it subscribes to the participation goal and shall meet the goal or demonstrate that it could not meet them despite its best efforts. Failure to provide commitments to meet the established goal for the contract or failure to meet the good faith efforts may be grounds for rejection of the bid as non-responsive.

2. **Zero Percent Goal.** If a zero goal for participation by DBEs is established, the Contractor shall promote the objectives of the DBE Program by providing opportunities for DBEs to participate in these areas, with such participation to be credited towards the race-neutral component of the Department's DBE Program.

C. DBE Eligibility. Only those DBE firms that are certified under the New York State Unified Certification Program are eligible under the DBE Program. Only the work, services or products provided by the DBE Firms under NAICS code(s) which the DBE is certified for, at the time the DBE enters into a contract with the Contractor, can be credited towards the contract goal. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE. A directory of certified firms is available on the NYS Unified Certification Program website at <https://nysucp.newnycontracts.com/>.

D. Counting DBE Participation Towards the DBE Goal. The value of the work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the participation is a commercially useful function (CUF). A DBE Prime Contractor shall continue to provide opportunities for participation by other DBEs in all types of contracts and procurement activities. Work performed by DBEs on the contract will be counted as set forth below. If the Department determines that some or all of a DBE's work does not constitute a commercially useful function in accordance with federal regulations, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

The participation of a firm that is certified as an MBE cannot be counted toward a WBE goal, and the participation of a firm that is certified as a WBE cannot be counted toward an MBE goal. The participation of a firm that is certified as both an MBE and a WBE will only be counted toward one goal for each contract pay item performed by the firm in its entirety and cannot be divided between the two goals. The participation of a firm that maintains more than one certification may only be counted toward one goal (i.e., MBE, WBE, or SDVOB) for each contract pay item in the contract. A joint venture between a DBE/MBE/WBE/SDVOB and a non-DBE/MBE/WBE/SDVOB is allowed however only work performed independently by the DBE/MBE/WBE/SDVOB, not the Joint Venture, will be counted toward the DBE/MBE/WBE/SDVOB goal(s) based on the total dollar value of the clearly defined portion of the work that the DBE/MBE/WBE/SDVOB performs with its own forces. The joint venture agreement is subject to approval by the Department, a copy of which is to be furnished by the Contractor before execution of the contract. For purposes of Commercially Useful Function (CUF) review, the DBE/MBE/WBE/SDVOB must comply with the provisions of §102-12E. *Commercially Useful Function.*

The Bidder is responsible to verify the information provided by the DBE and ensure that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the Bidder.

1. *Subcontractors.* A Subcontractor is any individual, firm, or corporation to whom the Contractor, with written consent of the Department, sublets any part of the contract.

100% of the value of the work performed by a DBE Subcontractor will be counted toward the DBE goal, including the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment rented or leased from the Contractor or its affiliates will not be counted.

2. *Manufacturers/Fabricators.* A Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. A Fabricator is a firm that assembles, constructs, or otherwise substantially alters materials or supplies into assemblies, components, or finished items for inclusion into the work prior to resale.

100% of the cost of the materials or supplies from a DBE Manufacturer or Fabricator will be counted toward the DBE goal. Manufacturers or Fabricators may provide materials to the Contractor or a Subcontractor working on the contract for installation. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a Manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

3. *Material Suppliers.* A Material Supplier, also known as a regular dealer, is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment of the general character described in the specifications required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A Material Supplier is an established, regular business that engages in, as its principal business, and under its own name, the purchase and sale or lease of the products in question.

A DBE supplier performs a commercially useful function as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

Equipment rental or leasing is considered to be a type of material supply activity and is credited at 60%. Material Suppliers may provide materials to the Contractor or a Subcontractor working on the contract for installation. Credit determination awarded to a firm for the provision of materials and supplies (i.e., whether the firm is acting as a material supplier or broker) will be determined on a contract-by-contract basis. If it is determined that the material supplier is acting as a broker, the participation will be credited accordingly.

A Material Supplier who deals in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt, and items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification), need not own, operate nor maintain a store, warehouse, or other establishment, if it owns and operates distribution equipment for the products. This can be accomplished by either maintaining stock of the product or through delivery of the materials, to the job site or Contractor's designated location, by using the Material Supplier's own trucks. Any supplementing of Material Suppliers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. To be considered valid, the long-term lease shall include the lessor's name, list of trucks to be leased by

vehicle identification number (VIN), and the agreed upon amount of the cost and method of payment. Third party haulers do not qualify as a long-term lease. The operator shall be an employee of the DBE. It shall be the responsibility of the DBE to provide the operator's fuel, maintenance and insurance for all leased trucks.

4. *Distributor.* A DBE Distributer is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE Distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a Manufacturer's facility), making it liable for loss or damage not covered by the carrier's insurance.

If the materials or supplies are purchased from a DBE Distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40% of the cost of materials or supplies (including transportation costs) will be credited.

A DBE Distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE Distributor. Where a Distributor "drop ships" materials without assuming risk or does not operate in accordance with its distributorship agreement, credit is limited to fees or commissions.

5. *Brokers/Manufacturer's Representatives.* A Broker/Manufacturer's Representative is a firm that arranges or expedites transactions for materials.

100% of the expenditures for fees or commissions charged for assistance in the procurement of, or fees for transportation charges for the delivery of, materials or supplies provided by a DBE Broker/Manufacturer's Representative will be counted toward the DBE goal, provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted. A Broker/Manufacturer's Representative may arrange or expedite transactions for materials to the Contractor or Subcontractor working on the contract.

6. *Services.* A Service is a firm that provides an economic benefit, such as professional, technical, consultant, or managerial service, or provides bonds or insurance specifically required for the performance of the contract.

100% of the expenditure for fees charged by a DBE Service will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

7. *Trucking Firms.* A DBE trucking firm shall own and operate at least one fully licensed, insured, and operational truck used on the contract and shall be responsible for the management and supervision of the trucking operation, and the arrangement cannot be contrived solely for the purpose of meeting the DBE goal. The DBE trucking firm shall control the day-to-day DBE trucking operations and shall be responsible for: (1) negotiating and executing rental/leasing agreements; (2) controlling the work force; (3) coordinating the daily trucking needs with the Contractor or Subcontractor; and (4) scheduling and dispatching trucks.

100% of the value of the trucking operations the DBE provides on the contract using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the DBE using drivers it employs, will be counted toward the DBE goal. A lease shall

indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

E. Commercially Useful Function. A DBE's participation will only be counted toward meeting the DBE contract goal when it performs a commercially useful function. To be considered as performing a commercially useful function, a DBE shall be responsible for the execution of a distinct element of work on a contract and carry out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. This applies to all work performed by a DBE including Subcontractors, Manufacturers / Fabricators, Material Suppliers, Brokers / Manufacturer's Representatives, Services and Trucking Firms regardless of whether the DBE's participation is intended to count towards the goal(s). With respect to supplying materials to be used on the contract, the DBE shall assume the responsibility for negotiating price, determining quality and quantity, ordering the material, and paying for the materials.

Regardless of whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the Contractor will receive no credit toward the goal. If the reduction in credit results in the DBE participation to fall below the Contractor's commitment, the Contractor shall make every effort to find another DBE to make up the shortfall to meet their commitments, in accordance with the federal regulations.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. The arrangement cannot be contrived solely for the purpose of meeting the DBE goal. The Contractor shall not seek credit toward the goal through any arrangements or actions of others where the Contractor knows or should have known based upon evidence and circumstances present, that a DBE is not performing a commercially useful function.

1. *Work Force.* The DBE shall employ a work force (including administrative and clerical), separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their affiliates. The DBE must use its workforce to perform or exercise responsibility for its portion of the contract. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the DBE can demonstrate it maintains an employer-employee relationship with the employee by being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employee. The routine transfer of work crews from another employer to the DBE will not be allowed.

2. *Supervision.* All work performed by the DBE shall be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the contract work.

3. *Materials.* DBE Subcontractors shall negotiate price, determine quality and quantity, order, install (where applicable) and pay for the materials(s) required to perform the work when material supply is included in their scope of work.

4. *Equipment.* DBE Subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice provided the equipment is not rented/leased from the Prime Contractor or its affiliate, except as noted below. Before supplementing their equipment, the DBE must first own and operate at least one operational business-critical piece of equipment capable of independently providing a service under the contract. There may be rare instances in which a DBE may use a Prime Contractor's equipment, supplies, etc. to a limited degree (e.g., the DBE's backhoe breaks down and the DBE uses the Prime Contractor's backhoe for the rest of the day; use of a crane; etc.). Such limited use must be approved by the Department. Consequently, if a charge for the use of a Prime Contractor's equipment (distinct from the DBE's labor in operating the equipment) is part of the cost of the DBE's contract, it would be subtracted from the DBE credit allowed for the contract. Should back charges result in DBE participation falling below the goal(s), the Contractor shall be required to backfill.

F. Submission of Proposal. In submitting a proposal, a Bidder declares that it shall make commitments to those qualified DBEs whose participation the Bidder submits to meet the contract goal.

All Bidders shall submit a complete DBE Participation Package with their bid proposal. The DBE Participation Package shall include a summary of the confirmed DBE commitments (i.e., AAP 14LL); DBE confirmation on Department provided forms (i.e., AAP 20, AAP 22, and AAP23) for each DBE firm for the type and amount of work shown in the summary of commitments; and sufficient good faith effort documentation (if required). Confirmed DBE commitments are commitments where the proposed DBE participation is firm, the work is clearly defined, the correct NAICS codes have been identified, the DBE firm is certified to perform the work, and the proposed commitments have been verified by the DBE firm. The Bidder's summary of commitments shall include DBE name, DBE address, work category, and commitment amount.

In addition, per 49 CFR 26.11, all Bidders shall submit with their bid proposal a Bidder's List (i.e., CONR 80LL Bidder's List) which contains information for all Subcontractors, both DBEs and non-DBEs, who provided quotes on the contract. The Bidder's List shall include the Subcontractor's name and work code applicable to each scope of work the Subcontractor sought to perform in its quote. Failure to submit the required Bidders List information may result in rejection of the bid.

G. DBE Participation Package. For Federal-Aid contracts, all Bidders shall submit a complete DBE Participation Package to the Department with their proposal. The DBE Participation Package shall include confirmed DBE commitments; DBE confirmation, on Department provided forms (i.e., AAP 20, AAP 22, and AAP23), for each DBE firm for the kind and amount of work shown in the Bidder's commitments; and good faith effort documentation (if required). No additions, substitutions or deductions to the DBE commitments identified at time of letting will be considered as part of the DBE Participation Package.

A commitment to a DBE is expressed as a dollar amount agreed to by both the Bidder and the DBE for the performance of identified work, services or products. Commitments are for quantities of contract pay items, or associated to contract pay items for work, services or

products that are not measured in the same manner as the contract pay item. Commitments for less than the full scope of the contract pay item shall be indicated as such in the DBE Participation Package.

For each DBE Subcontractor, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 20 *DBE Subcontractor / Work Service / Professional Service Commitments / Confirmation*), the contract pay item number(s) of the work to be performed.

For each DBE Manufacturer, Fabricator, Material Supplier (including equipment rental without operator), Distributor, or Broker, the Bidder shall be responsible for the collection, review and submission of a fully executed DBE confirmation form (i.e., AAP 22 *DBE Material Commitments / Confirmation*) affirming that the responses received in the questionnaire, by its proposed DBE, indicate the performance of a commercially useful function, will be consistent with the preliminary counting of such participation toward the contract goal. A separate AAP 22 must be submitted for each separate and distinct contract pay item number(s) of the materials, supplies, articles, or equipment to be manufactured, fabricated, supplied, or otherwise provided. If the material, supplies, articles, equipment or service does not correspond to a specific contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates.

For each DBE Service, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 20 *DBE Subcontractor / Work Service / Professional Service Commitments / Confirmation*), the contract pay item number(s) of the service to be provided. If the Service does not correspond to a specific Department contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates.

For each DBE Trucking Firm, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 23 *DBE Trucking Commitments / Confirmation*), the contract pay item number(s) for which the trucking operations are to be performed. If the trucking operation does not correspond to a specific contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates. The Bidder shall indicate the type of trucking operation to be performed, the number of trucks owned/leased, the number of trucks working on-site or off-site, rate per hour/ton/load/etc., duration or amount, and total dollar value of the proposed DBE commitment. The Bidder shall provide copies of all lease agreements utilized by the DBE Trucking Firm.

If the Bidder meets or exceeds the established DBE goal(s) for the contract with commitments to certified DBEs, it is not necessary for the Bidder to submit documentation of good faith efforts. However, if after review by the Department, a Bidder's commitments fall below goal, no additional time will be given to submit good faith efforts.

If the contract goal(s) is not met in full, then the Bidder shall provide documentation of its good faith efforts with their proposal, in accordance with §102-12H. *Good Faith Efforts* that demonstrate that the Bidder attempted but could not meet the goal(s).

If the Low Bidder fails to submit a complete DBE Participation Package (i.e., DBE commitments, DBE confirmation, and/or GFE) at time of letting they may be deemed non-responsive by the Department.

For tracking and oversight purposes, after the Low Bidder's commitments and/or good faith efforts have been accepted by the Department, the Low Bidder will be notified by email to input their DBE Participation Package, as submitted with their proposal, in EBO within 5 calendar days. On Design Bid Build Best Value contracts, notification will be sent upon designation. For those items of work where a DBE Subcontractor is performing less than 100% of a contract pay item, the Bidder shall explain, in writing, the scope of work to be performed by the DBE and shall indicate those items as such in EBO (i.e., split item).

Once the Low Bidder has completed all entries in EBO, they shall notify the Construction Pre-Award Unit at construction.civilrights@dot.ny.gov. Once the Low Bidder has received notification by the Department that their entries have been accepted, each DBE shall acknowledge the commitment in EBO within 10 calendar days.

The Contractor shall execute subcontracts, agreements, or purchase orders, as appropriate, with each DBE for the type and amount of work identified in the approved AAP19 *DBE/MBE/WBE/SDVOB Schedule of Participation*, no later than 10 days after contract award.

H. Good Faith Efforts. If the Low Bidder fails to meet the DBE contract goal, the Department will evaluate the good faith efforts the Bidder made to obtain DBE participation to determine if the efforts are sufficient to recommend award of the contract. Efforts to obtain DBE participation that are merely pro forma are not good faith efforts, nor are efforts that, even if they are sincerely motivated, given all relevant circumstances, could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

If the Bidder has not met the DBE goal, it shall submit sufficient documentation that substantiates good faith efforts. Such documentation shall include, at a minimum, the AAP10 *DBE/MBE/WBE/SDVOB Solicitation Log*, all forms of solicitation inquiries that were returned as undeliverable, quotations submitted by DBEs that were not selected for participation, quotations submitted by non-DBEs that were selected for comparison, and an explanation for the Bidder's action in each case.

In order to evaluate the Bidder's good faith efforts, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made.

Below is a list of the types of actions which the Department will consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. Other factors or types of efforts may be relevant in appropriate cases.

1. Securing participation by certified DBE firms for work that they are listed to perform that is in the contract. Only DBEs certified by the NYS Unified Certification Program (NYSUCP) shall be used to fulfill the established goal on Federal-Aid contracts.
2. For all work, soliciting, at a minimum, certified DBEs within 100 miles of the contract location.
3. The Bidder shall conduct market research to identify small business contractors and suppliers and solicit, through all reasonable and available means, the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events; advertising and/or written notices; posting of notices of sources sought and/or requests for proposals, written notices or emails to all certified D/M/WBEs listed in the appropriate directory of certified firms that specialize in the areas of work desired and which are located in the area or surrounding area.

The Bidder shall solicit this interest as early in the bidding process as practicable, to allow the DBEs to respond to the solicitation and submit a timely offer. The Bidder shall determine with certainty if the DBEs are interested by taking appropriate steps, including following up the initial solicitation with at least one additional solicitation via a different media. The Bidder shall keep records of efforts to solicit and negotiate with DBEs as evidence of good faith efforts, using the *Solicitation Log* as a continuing record.

4. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, either breaking down operations or combining like or related operations into logistically and economically feasible units to facilitate DBE participation, even when the Contractor might prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

5. Providing interested DBEs with adequate information on where and how to obtain the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their timely offer.

6.
 - a. *Negotiating in good faith with interested DBEs.* It is the Bidder's responsibility to make a portion of the work available to DBE Subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and material suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

 - b. *Additional Costs.* The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the Department determines the price difference to be excessive or unreasonable.

7.
 - a. *Not rejecting DBEs as unqualified.* The Bidder shall not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example union vs. non-union status) are not legitimate causes for rejection or non-solicitation of proposals in the Bidder's efforts to meet the contract goal. Rejection of the DBE because its quotation for the work was not the lowest received is not considered good faith effort. Nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy contract goals.

 - b. *Replacement Prices.* A prime contractor's inability to find a replacement DBE at the original price is not sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

8. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the Department or the Bidder.

9. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance.

10. Where available, effectively using the services of available minority/women focused media, trade associations, and contractor groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

11. Stating future commitments to use DBEs after contract award is not considered to be responsive to the contract solicitation requirements or to constitute good faith efforts.

A Bidder shall also submit a detailed explanation identifying any circumstances unique to the contract that were deterrents to meeting the goal(s) (e.g., night work, small quantities over multiple locations, specialized work, etc.); detailed rationale as to why a specific scope of work is not considered to be a subcontract item and therefore was not solicited; and a detailed explanation for any scope of work deemed “self-performing” without the intent to split the work.

I. Pre-Award Approval. In order to award a contract to a Bidder that has failed to meet the DBE contract goal(s), the Department must determine that the Bidder's good faith efforts were those that a Bidder actively and aggressively seeking to meet the goal(s) would make given all relevant circumstances.

If the Department determines that the Low Bidder has failed to meet the goal and good faith effort requirements, the Department may issue a finding of non-responsiveness. Before awarding the contract to a subsequent bidder, the Department will provide the Low Bidder an opportunity for administrative reconsideration by an official who did not take part in the original determination.

J. Administrative Reconsideration. If the Low Bidder is deemed non-responsive due to failure to meet the civil rights requirements, and believes they have good cause, they shall have 5 calendar days from notification to request an Administrative Reconsideration. The Low Bidder will have the opportunity to provide argument and written documentation of good faith efforts made prior to letting, and to meet in person with the Department's reconsideration official upon notification concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department will send the Low Bidder a written decision on reconsideration, explaining the basis for finding that the Low Bidder did or did not meet the goal or make adequate good faith efforts to do so.

K. Bidder's Failure to Comply with DBE Program Requirements. The Department's acceptance of the Low Bidder's proposal is conditioned upon the Low Bidder's fulfillment of the DBE participation requirements. Failure by the Low Bidder to submit a complete DBE participation package may be grounds for rejection of the proposal as non-responsive and the deposit may be subject to forfeiture.

CHANGED CONDITION CLAUSES

DIFFERING SITE CONDITIONS. 23 CFR 635.109(a)(1)

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party of the specific differing site conditions before the site is further disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the site conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination as to whether an adjustment to the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

SUSPENSIONS OF WORK DIRECTED BY THE ENGINEER. 23 CFR 635.109(a)(2)

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, not customary, or not inherent to the construction industry) and the Contractor believes that it is due additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by circumstances beyond the control of and not the fault of the Contractor, its Suppliers or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether an adjustment to the contract is warranted. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract. No contract adjustment will be allowed unless the Contractor has provided the required written request for adjustment within the time prescribed.

SIGNIFICANT CHANGES IN THE CHARACTER OF WORK. 23 CFR 635.109(a)(3)

The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of work under the contract, whether such alterations or changes are in themselves significant changes in the character of work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made by the Department, either for or against the Contractor, in such amount as determined to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances: when the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or when a Major Item of work, as defined elsewhere in the contract, is increased in excess of 125 percent, or decreased below 75 percent of the original contract quantity. Any allowance for a change in unit price shall apply only to that portion of work in excess of 125 percent of the original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS.

DISPUTED WORK AND DISPUTE RESOLUTION

The term "dispute" shall mean a disagreement between the Contractor and the Department concerning a matter of contract performance or contract compensation. Dispute resolution may involve adjustments in compensation, adjustment of contract pay-items, the addition of new contract pay-items to the contract, and/or extension of time for performance. The Contractor shall continue the work during the pendency of the dispute.

It is the goal of the Department to resolve disputes that may arise under the contract in a timely, just and fair manner consistent with the terms of the contract. The dispute resolution process may be undertaken at any time from the contract award to the issuance of the final payment by the Office of the State Comptroller. The dispute resolution process recognizes and will take into consideration the risks and controls inherent in construction which the Contractor or the Department have agreed to assume pursuant to the terms of the contract. The Contractor is encouraged, when initiating a dispute, to provide information concerning measures that may be taken to mitigate the damages.

Disputes of any nature shall be made in strict accordance with the contract provisions, including the notice and recordkeeping provisions. The Department reserves the right to modify specifications or delete portions of the work being disputed in order to mitigate damages.

A. Disputed Work. If the Contractor is of the opinion that any work directed by the Engineer to be completed as contract work is extra work and not contract work, or that any order of the Engineer exceeds the requirements of the provisions of the contract, the Contractor shall provide the Department written notice and maintain records. After submitting the required notice, the Contractor shall complete its dispute submission in accordance with Section E. *Required Content of Dispute Submission.*

1. Determined to Be Contract Work. If the Department determines that the disputed work is contract work and not extra work, or that the direction given to the Contractor and protested was proper, the Department will direct the Contractor to continue the disputed work and the Contractor shall promptly comply. The Contractor's right to further pursue a dispute for extra compensation or damages will not be affected in any way by the Contractor complying with the directions of the Department to proceed with the work, provided the Contractor continues to keep and submit daily records to document all labor, material and equipment used for disputed work in accordance with *Extra Work and Time Related Compensation. Section C.1. Daily Summary to the Engineer.*

2. Determined to Be Extra Work. If the Department, determines that the disputed work is extra work and not contract work, or that a direction given to the Contractor and protested was not proper, then a contract adjustment will be made. Compensation will be made for such work in accordance with *Extra Work and Time Related Compensation.* The Contractor shall continue to maintain force account records until receipt of the change order approved by the Office of the State Comptroller. Documented, additional, actual and reasonable costs incurred by the Contractor pursuant to following a written order to perform work (that was subsequently contained in a change order which was disapproved) will be considered reimbursable. Eligibility for additional compensation shall cease upon notification of the disapproval of a change order.

B. Time Related Disputes. The term "time related dispute" shall mean any dispute arising from any event which affects the scheduled time of performance. This paragraph is intended to cover all such events which include major deductions or increases to quantities of work, suspension of work and cancellation of contract, and termination, as well as actions, forces or

factors, such as "delay", "disruption", or "interference."

If the Contractor believes that it is or will be entitled to additional compensation for time related disputes, whether due to delay, extra work, disputed work, breach of contract, or other causes, the Contractor shall comply with the notice and recordkeeping provisions. The Department will have no liability and no adjustment will be made for any damages which accrued more than 15 calendar days prior to the filing of written notice with the Engineer. The primary tool used to evaluate the time of performance is the Contractor's progress schedule. Department approval of a schedule or a revised schedule does not entitle the Contractor to a time extension or any time related damages. Compensation will be made for such work in accordance with *Extra Work and Time Related Compensation Section D. Time Related Dispute Compensation*.

C. Acceleration Disputes. The Contractor may not dispute costs associated with acceleration of the work unless the Department has given prior express written direction to the Contractor to accelerate its effort. The Contractor shall always have the basic obligation to complete the work in the time frames set forth in the contract. Lack of express written direction on the part of the Department shall never be construed as approval.

If the Contractor does accelerate its work efforts pursuant to written direction from the Department, compensation will be made in accordance with *Extra Work and Time Related Compensation Section E. Acceleration Compensation*. The Department, in determining whether any compensation is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Contractor's control.
D. Non-Compliance Disputes. The term "non-compliance dispute" shall mean any dispute arising from any event which affects the Contractor's ability to comply with the general provisions of the contract. This includes, but is not limited to, liquidated damages associated with the Contractor's failure to comply with the civil rights requirements including Commercially Useful Function; Good Faith Efforts; Substitutions and Terminations.

If the Contractor is of the opinion that any order or action of the Engineer exceeds the requirements of the provisions of the contract, the Contractor shall provide the Department written notice and maintain records in accordance with §104-06 *Notice and Recordkeeping*. If the Department determines that remedies imposed on the Contractor for non-compliance were not proper, then a contract adjustment will be made.

E. Review Time Periods for Disputes. After providing written notice, the Contractor shall, as soon as the information is available or ascertainable, provide the Engineer with a summary of its dispute contentions in accordance with Section F. *Required Content of Dispute Submission*, in sufficient detail so that the Engineer may make a determination. The Engineer will make an initial response, in writing, within 21 calendar days after the Contractor provides the dispute submission.

If a dispute is not resolved by the Engineer to the satisfaction of the Contractor, within 10 workdays of receipt of the Engineer's written decision or the Engineer fails to reply within 21 calendar days, the Contractor shall notify the Regional Director, in writing, with a copy to the Engineer, of its contentions relative to the dispute.

If the dispute is not resolved by the Regional Director to the satisfaction of the Contractor, within 15 calendar days of receipt of the Regional Director's written decision or the Regional Director fails to reply within 30 calendar days, the Contractor shall notify the Commissioner, in writing, with copies to the Engineer and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and the Regional Director and its rebuttal of their previous findings.

1. Disputes to the Commissioner Up to \$50,000. For all disputes to the Commissioner of \$50,000 or less, the Department will respond in writing within 45 calendar days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required, the Contractor shall provide such information within 30 calendar days of the request unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 15 calendar days after receipt of said additional documentation or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 15 calendar days of receipt of the Department's response, or within 15 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department shall schedule a meeting or conference. By agreement between the Department and the Contractor, such time periods may be modified.

2. Disputes to the Commissioner Over \$50,000 to \$250,000. For all disputes to the Commissioner over \$50,000 and less than or equal to \$250,000, the Department will respond in writing within 60 calendar days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required, the Contractor shall provide such information within 30 calendar days of the request unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 30 calendar days after receipt of said additional documentation, or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 15 calendar days of receipt of the Department's response, or within 15 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department will schedule a meeting or conference and notify the Contractor within 30 calendar days of the scheduled date. By agreement between the Department and the Contractor, such time periods may be modified.

3. Disputes to the Commissioner over \$250,000 or of Undetermined Value. For disputes to the Commissioner over \$250,000 or that have an undetermined value, the Department will respond in writing within 90 calendar days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute, is required, the Contractor shall provide such information within 30 calendar days unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 60 calendar days after receipt of the said additional documentation, or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 30 calendar days after the receipt of the Department's response, or within 30 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department will schedule a meeting or conference and notify the Contractor within 30 calendar days of the scheduled date. By agreement between the Department and the Contractor, such times periods may be modified.

F. Required Content of Dispute Submission. All disputes shall be submitted in writing to the Engineer and shall be in sufficient detail to enable the Engineer to ascertain the basis and the

amount of each dispute. If requested and as a minimum, the following information shall be provided when such information is ascertainable by the Contractor:

1. General.

- a. The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.
- b. A copy of the notice of dispute for the specific dispute by the Contractor.
- c. To the extent known, the name, function, and activity of each Department official, or employee or agent, involved in, or knowledgeable about facts that gave rise to such dispute.
- d. The name, function, and activity of each Contractor or Subcontractor official, or employee, involved in, or knowledgeable about facts that gave rise to such dispute.
- e. The identification of any pertinent documents, and the substance of any material communication relating to such dispute.
- f. A statement as to whether the additional compensation or extension of time if requested is based on the provisions of the contract or is an alleged breach of contract.
- g. If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

2. Time Related Dispute Submissions.

- a. A description of the operations that were delayed, the reasons for the delay, how they were delayed, including the report of all scheduling experts or other consultants, if any.
- b. The documented process of establishing, maintaining and updating the progress schedule, showing when the delay occurred and how it affected the schedule, in accordance with the Progress Schedule or a CPM specification, if applicable.
- c. The amount of additional compensation sought in accordance with Extra Work and Time Related Compensation Section D. *Time Related Dispute Compensation*.

3. Acceleration Dispute and Disputed Work Submissions.

- a. A detailed factual statement of the dispute providing all necessary dates, locations and items of work affected by the dispute.
- b. The specific provisions of the contract which support the dispute and a statement of the reasons why such provisions support the dispute.
- c. The amount of additional compensation sought, and a breakdown of that amount shall conform to the requirements of *Extra Work and Time Related Compensation* Section B. *Force Account Work* except for acceleration disputes which shall conform to the requirements and categories specified in *Extra Work and Time Related Compensation*-Section D. *Time Related Dispute Compensation*.

G. Required Certification of Disputes Over \$50,000. When submitting any dispute over \$50,000, the Contractor shall certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:

- 1. That supporting data is accurate and complete to the Contractor's best knowledge and belief,
- 2. That the amount of the dispute is based on sound engineering principles, is supported by sound mathematical and cost accounting principles and the dispute itself is in accordance with the terms of the contract, and accurately reflects what the Contractor in good faith believes to be the Department's liability; and,

3. That the dispute and the amount of the dispute is in full compliance with the Federal False Claims Act, 31 U.S. Code Section 3729, and New York State False Claims Act, NYS Finance Law Article XIII; and that the Contractor acknowledges that if determined to be in violation of these acts by a court of proper competent jurisdiction, such violating Contractor shall be subject to liability for a civil penalty, plus up to three times the damage the State sustains by such violation.

4. The certification shall be executed by:

- a. The Contractor, if the Contractor is an individual; or,
- b. A senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs, if the Contractor is not an individual.

H. Auditing of Records. A Contractor who has filed a dispute, or Subcontractor, Manufacturer, Fabricator or Material Supplier on whose behalf a dispute has been filed, shall have the following records available for audit at any time following the filing of such dispute, and shall cooperate with the auditors, whether or not such dispute is part of a suit pending in the courts of this State. The audit may be performed by employees of the Department or by an independent auditor appointed by the Department and may begin on 15-day notice to the Contractor, Subcontractor, Manufacturer, Fabricator or Material Supplier as is appropriate. The Contractor, Subcontractor, Manufacturer, Fabricator or Material Supplier shall cooperate with the auditors. The Department will maintain the audit, its backup, reports, schedules and conclusions as confidential material. Failure to maintain and retain sufficient records shall constitute a waiver of that portion of such dispute that cannot be verified and shall bar recovery thereunder. In the event the Contractor fails to substantially furnish the required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at contract unit prices for the work performed. The Contractor will be allowed to review the audit findings and will be allowed 30 calendar days to respond to any items disallowed by the audit.

Without limiting the generality of the foregoing, the auditors shall have available to them and the Contractor agrees to provide access to and true copies of the original, in whatever format the records are created/maintained, of the following documents:

- 1. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.
- 2. All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.
- 3. Daily time sheets, superintendent diaries or log sheets and foreperson's daily reports.
- 4. Union agreements and reports, if any.
- 5. Insurance policies, welfare and benefits records or plans for union and non-union personnel.
- 6. Payroll register, individual employee earnings records and payroll tax returns.
- 7. Material invoices, purchase orders, and all material and supply acquisition contracts.
- 8. Material cost distribution work sheet.
- 9. Equipment records (list of company equipment, rates, depreciation schedules, daily equipment reports or logs, fueling logs or records, equipment lease purchase agreements, and equipment purchase invoices).
- 10. Depreciation records on all company equipment whether such records are maintained by the company involved, its accountant, or others.
- 11. If a source other than depreciation records is used to develop costs for the Contractor's

internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

12. Vendor rental agreements, subcontractor invoices, agreements and back charge records.

13. Subcontractor payment certificates.

14. Canceled checks (payroll and vendors).

15. Job cost ledger or report and job payroll ledger.

16. General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.

17. Cash receipts, cash disbursements journal, purchase journal, petty cash journal and supporting vouchers.

18. Audited and unaudited financial statements for all years during operations on this contract.

19. Documents which reflect the Contractor's actual overhead during the years contract work was performed.

20. Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

I. Contract Closeout Process. A dispute, or a portion thereof, that has been previously submitted to the Department which remains unresolved to the satisfaction of the Contractor, may be submitted for Department review in connection with the closeout process. The records made, and recommendations or actions of a facilitator, a Dispute Review Board, or any other dispute resolution method, shall be off the record, non-binding, confidential, and may not be used in any future litigation.

1. Contract Closeout Meeting. If requested by the Contractor, the Department will schedule a contract closeout meeting with the Office of Construction in Albany. The contract closeout meeting process involves meeting(s) with the Contractor and its representatives and Department personnel to amicably resolve all remaining disputes of the Contract. In lieu of pursuing the closeout meeting process, the Contractor may elect to utilize the Gatekeeper process.

2. Claims. If any dispute, or portion thereof, remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Contractor may file a claim in the New York State Court of Claims in accordance with law and the provisions of the Contract.

EXTRA WORK AND TIME RELATED COMPENSATION.

The Contractor will be compensated for extra work by agreed price in accordance with Section A. *Agreed Price Work*, or by force account in accordance with Section B. *Force Account Work*.

A. *Agreed Price Work.* Agreed prices for new items of work or materials in accordance with one of the methods outlined below may be accepted by the Engineer and incorporated into a change order as the Department may deem them to be just and fair and beneficial to the State. An agreed price may be offered by the Contractor and accepted by the Engineer for a defined quantity of additional work. The Contractor shall provide an agreed price proposal generally not later than 7 calendar days prior to beginning the work. If a price has not been agreed to, in writing, prior to starting the work, the Contractor shall keep and submit daily records to document all labor, material and equipment used to complete the work in accordance with Section C.1. *Daily Summary*. A change order containing an agreed price not supported by one of the following may be subsequently rejected by the Department or the Office of the State Comptroller.

1. *Original/Adjusted Contract Bid Price.* The original contract bid price, or the original contract bid price adjusted for documented increase or decrease in labor cost, material cost, equipment rate, mobilization, and/or site conditions.

2. *Weighted Average Price.* The statewide or regional weighted average price (WAP) for a contract pay item for minimum of 3 contracts of similar type, quantity, and/or location of work over a one to two-year period; as shown in the Pay Item Catalog (PIC). The Engineer may adjust the WAP for documented increase or decrease in labor, materials, equipment, mobilization, and/or site conditions.

3. *Average of 3 Lowest Bidders.* The average bid price for a contract pay item by the 3 lowest responsible bidders on the contract, including the Contractor, presented in the Tabulation of Bids. If less than 3 responsible bids were received, this option shall not be used.

4. *Price Analysis.* A price analysis shall be based on an estimated breakdown of charges listed in Section B. *Force Account Work*, using the labor, equipment and other rates available when the agreed price is developed by the Contractor. The analysis shall be based on crew composition, material prices, equipment production and overall production rates that are reasonable in comparison with contract bid price work. Price analyses shall be submitted in a format acceptable to the Department. Price Analysis forms are available from the Department's website at www.dot.ny.gov/main/business-center/contractors/construction-division/forms.

The Contractor will be reimbursed for labor in accordance with Section B.1.a *Labor*. The Contractor will be reimbursed for each class of labor, not individual workers, at the prevailing wage rate for that trade and classification.

The Contractor will be reimbursed for materials in accordance with Section B.1.b *Materials*.

The Contractor will be reimbursed for equipment in accordance with Section B.1.c *Equipment*. Equipment rates shall be used with no rate adjustment factor and no regional adjustment factor. An appropriate type and size of equipment similar to that available on the contract site, if present, shall be used.

The Contractor will be reimbursed for required insurances in accordance with Section B.1.d *Insurance*.

The Contractor will be reimbursed for overhead at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

The Contractor will be reimbursed for profit at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

Due to the cost and effort associated with development, a price analysis should generally be reserved for extra work under an individual contract pay item or a single price analysis, of more than \$5,000.

B. Force Account Work. Where there are no applicable unit prices for extra work and agreed prices cannot be readily established or substantiated, the Contractor will be reimbursed by Force Account for the actual, reasonable and verifiable cost of the items listed below. The Contractor shall maintain and submit force account records in accordance with Section C. *Force Account Report*.

1. Contractor Costs. At the preconstruction meeting, the Contractor should provide the Engineer documentation supporting its insurance rates for the current period and provide updates within 30 days after the renewal date, to assist in timely preparation and review of force account reports. All rates will be those in effect at the time the work is performed.

a. *Labor.* Necessary labor costs include wages, supplemental (fringe) benefits, FICA, Medicare, Federal Unemployment Tax (FUTA), State Unemployment Insurance (SUI), paid holidays, paid sick leave, and other such reasonable charges that are paid by the Contractor pursuant to existing written agreements with its employees and/or labor organizations. Labor shall be recorded in hours to the nearest half hour.

(1) *Wages and Fringe Benefits.* The Contractor will be reimbursed for each worker separately at the actual payroll rate; an average rate based on different workers will not be accepted. The wage rate for an individual worker may be up to 150% of the prevailing wage and 100% of the supplemental (fringe) benefits, provided the Contractor documents through certified payrolls that the worker has and continues to be paid more than the prevailing wage for contract work. The Contractor shall obtain the approval of the Engineer for wage rates for individual workers over 110% of the prevailing wage prior to that individual starting work.

There are no prevailing wage rates for foremen/forewomen. Foremen/forewomen are typically paid at a higher rate than the trades they supervise, due to additional responsibilities. The reimbursement for foremen/forewomen will be based on previous certified payrolls or other payroll records for that individual, if available, provided crew composition and overall production rates are reasonable.

If the Contractor is obligated by a labor agreement to pay a full day's pay for an individual in a required labor classification and cannot find other work on that day for that individual, the Contractor will be reimbursed for a full day's pay for that individual.

Professional or technical personnel specifically required or agreed to by the Department, in writing, to be present for specific critical work operations will be reimbursed as a direct labor cost. The reimbursement for these professional or technical personnel will be based on previous payrolls for that individual, as

certified by the employer, or by comparison to costs for similarly qualified personnel.

No reimbursement will be made for travel, lodging, bonuses, or other similar payments made to workers.

(2) *Standard Markups.* The Contractor will be reimbursed for FICA, Medicare, Federal Unemployment Tax (FUTA), State Unemployment Insurance (SUI), paid holidays, and paid sick leave using the Standard Labor Markup Rate, on all wages, not including supplemental (fringe) benefits. The Standard Labor Markup Rate, initially 15.2%, may be modified by the Department via Official Issuance.

The Contractor will be reimbursed for FICA and Medicare using the Standard Fringe Markup Rate on all supplemental (fringe) benefits paid in a payroll check or in cash to the employee. The Standard Fringe Markup Rate, initially 7.65%, may be modified by the Department via Official Issuance.

b. *Materials.* Materials are necessary products incorporated in the temporary or permanent work. The Contractor will be reimbursed for the costs of materials, including transportation to the site and sales taxes for materials not permanently incorporated into the work. Material transportation may be accounted for as part of the material unit price, a material unit price for transportation, a fee for transportation, or equipment and operator charges. Contractor or Subcontractor costs for transportation of materials shall be accounted for as labor and equipment in accordance with Section B.1.a. Labor and Section B.1.c. Equipment respectively. Because force account work has no associated pay lines/limits, materials will be measured as actual quantities delivered and incorporated, including any required overlap, and appropriate allowances for waste and/or disposal due to construction operations and/or installation practices.

The Contractor will be reimbursed, including sales taxes when applicable, for expendable materials such as oxygen, acetylene, propane, welding rods, form lumber, form oil, grinding wheels, saw blades, hammer and drill bits, drill steel, and tooth-bits consumed in progressing the work. Other small tools and tool/equipment supplies used or consumed in progressing the work are considered to be included in overhead and no separate reimbursement will be made.

Material acquired by direct purchase shall be documented by bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit will be determined by the Engineer in coordination with the Contractor for substantial salvageable material recovered.

c. *Equipment.* Equipment, other than small tools, used by the Contractor shall be of suitable size and suitable capacity required for the work to be performed. If the Contractor elects to use equipment of a higher rate than the equipment suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment upon which the rate is based will be recorded as a part of the Force Account Report. Usage will be recorded in hours to the nearest half hour to align with the recorded labor associated with the work. The Engineer will verify the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be related to the suitable equipment.

(1) *Mobilization Costs.* If the Contractor does not have a needed type or piece of equipment on the contract site or the equipment is not available to perform the extra work, the Contractor will be reimbursed for the reasonable cost of mobilization to and demobilization away from the work site. Mobilization and demobilization include the cost of transporting equipment; 50% of the hourly ownership rate of transported equipment during transportation, including loading, unloading, assembly, and disassembly; and fees for any required regulatory permits. Costs for demobilization away from the work site will not be paid if the equipment is kept on the site and performs additional contract bid price work.

(2) *Ownership Costs.* The Contractor will be reimbursed for its costs for providing equipment at the rates listed in the Cost Recovery software produced by Equipment Watch (hereafter referred to as Cost Recovery). The hourly ownership rates will reimburse the Contractor for all non-operating costs of providing equipment, including depreciation on the original purchase, costs of major overhaul repairs, facilities capital, normal risk insurance, property taxes, storage, licenses, security, record keeping, and mechanic's supervision.

The hourly ownership rate will be the Cost Recovery monthly rate divided by 176, multiplied by the rate adjustment factor for the equipment model year and then multiplied by the regional adjustment factor. If the Contractor has a piece of equipment remanufactured, rebuilt, or significantly altered, the rate adjustment factor may be modified, as documented by Equipment Watch.

For equipment required to be present and operating, the Contractor will be reimbursed for the product of the hours of actual use, multiplied by the hourly ownership rate.

For equipment required to be present; dedicated exclusively to the force account, not available for mobilization elsewhere, and not used on contract bid price work that day; the Contractor will be reimbursed for the product of the remaining non-operating hours in the shift, multiplied by 50% of the hourly ownership rate.

Equipment that is not required to be present will not be eligible for reimbursement of non-operating hours. If the Engineer directs or agrees that equipment mobilized for the operation is no longer required to be present, the Contractor may demobilize the equipment. If the equipment is demobilized, and subsequently determined to be required to be present, the Contractor will be reimbursed for remobilization.

For equipment without an operator that is designed to operate on a continuous long-term basis, such as a pump, portable variable message sign (PVMS), or temporary traffic signal, the Contractor will be reimbursed for a maximum of 176 hours a month.

Equipment with an hourly ownership rate of less than \$2 or a current purchase price of less than \$500 will be considered as small tools and equipment and will not be directly reimbursed.

(3) *Operating Costs.* The hourly operating rate includes preventative and field maintenance, fuel, lubricants, and other operating expenses as outlined in Cost Recovery, not including consumables or the operator's wages. The Contractor will be reimbursed for the product of the number of hours of actual use multiplied by the hourly operating rate. No reimbursement for operating costs will be made for equipment that is not operating.

(4) *No Established Rate.* If rates are not established in Cost Recovery for a piece of equipment, the Contractor shall contact the Cost Recovery publisher, Equipment Watch to establish rates. If Equipment Watch will not establish rates, the Department, in coordination with the Contractor, may establish rates for ownership costs and operating costs for that piece of equipment consistent with its cost and expected life.

(5) *Maximum Ownership Costs.* The maximum amount reimbursed for ownership costs of equipment, is limited, on a contract basis, to the original purchase price as listed in the Equipment Watch Retail Rental software. The Contractor shall not exchange equipment for a similar item for the purpose of extending the maximum ownership cost. Exchange of equipment for an engineering or mechanical reason shall be approved by the Engineer, or the maximum ownership cost will be limited to that reimbursed for the original piece of equipment. If the ownership cost is limited by the original purchase price, the Contractor will continue to be reimbursed for the operating cost for hours of actual use.

(6) *Backup Equipment.* The Contractor will be reimbursed at 50% of the hourly ownership rate for redundant/backup equipment specifically required, or agreed to by the Department in writing, to be present for specific critical work operations.

(7) *Owner/Operator Equipment.* Equipment Owner/Operators utilized by the Contractor in the performance of work shall be accounted for as a service charge in accordance with Section B.3. *Service Charges.*

d. *Insurance.* The Contractor will be reimbursed for Workers Compensation, Commercial General Liability (CGL), Umbrella or Excess Liability, Special Protective and Highway Liability, Professional Liability/Errors and Omissions, Railroad Protective Liability, Marine Protection and Indemnity, and Pollution Liability insurances at the rate paid by the Contractor, in accordance with the method procured from its insurer(s).

(1) Contractors or Subcontractors that pay insurances based on a percentage of payroll will be reimbursed that percentage of the portion of item Section B.1.a. *Labor* specified in the Contractor's insurance policy.

(2) Contractors or Subcontractors that pay insurances based on of a percentage of gross sales will be reimbursed that percentage of the total of items in Section B.1.a. *Labor*, Section B.1.b. *Materials*, Section B.1.c. *Equipment*, Section B.1.e. *Overhead* and Section B.1.f. *Profit*.

(3) *Workers Compensation Insurance.* The Workers Compensation insurance rate will be the statutory loss cost rate established by the NYS Workers Compensation Insurance Rating Board, with the insurer's approved lost cost multiplier, all assessments and credits, and an experience modifier of 1.00, subject to the Construction Employment Payroll Limitation (CEPL) Program limits where applicable. The Contractor shall submit an insurance policy declaration/rate page from its insurer to validate the Workers Compensation insurance rate.

Where the Longshore and Harbor Workers' Compensation Act, Jones Act, Federal Employees Liability Act or other legal requirements impose additional liability on the Contractor, additional differentials will be added to the Worker's Compensation insurance rate.

For Contractors that obtain Workers Compensation insurance through a pooled fund or similar arrangement, the Contractor shall supply documentation from the Contractor's insurance carrier detailing the rate and basis for application.

The Contractor will be reimbursed for Workers Compensation insurance based on the Workers Compensation insurance rate described above, multiplied by gross wages, not including the premium portion of overtime nor supplemental (fringe) benefits, except when supplemental benefits are paid directly to the employee, up to the CEPL wage limit, where applicable.

e. *Overhead.* The Contractor will be reimbursed for overhead at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*. Overhead will be defined to include the following:

- (1) Additional costs for bond(s), Disability Benefits and Commercial Automobile insurance;
- (2) All salary, benefits and expenses of executive officers, supervising officers/employees, superintendents, project engineers, office engineers, CPM Schedulers, clerical or administrative employees, and other project level staff, but not including working forepersons; including payroll taxes, unemployment insurance, workers compensation insurance, and charges that are paid by the Contractor to or on behalf of those employees pursuant to written agreement with its employee(s) and/or labor organizations;
- (3) Small tools and small tool/equipment supplies, including shovels, picks, axes, saws, bars, sledges, lanterns, etc.;
- (4) Contractor's field office rental, utility charges, potable water, sanitation, cleaning, computers, CADD equipment, office equipment, office supplies, reproduction costs, etc.;
- (5) Administrative or other efforts required to maintain records and produce force account reports.

f. *Profit.* The Contractor will be reimbursed for profit at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

2. Subcontractor Costs. When the work is performed by a Subcontractor, the Contractor will be reimbursed the actual, reasonable and verifiable cost of such subcontracted work as outlined above in Section B.1. *Contractor Costs*, plus an additional 5% for subcontract administration, and the Contractor's costs for insurance in accordance with Section B.1.d *Insurance*.

Specialty Subcontractors are Subcontractors that are experts in a unique trade or are trained to perform very specialized work (i.e., pipe jacking, soil nail walls, fiber wrapping, pile installation, etc.) Only when the Deputy Chief Engineer (Construction) has given advanced approval of projected actual costs, the Department will reimburse the actual, reasonable and verifiable costs for tolls, mileage, lodging, and meals for Specialty Subcontractors required to

perform the work when such costs are deemed necessary due to the Specialty Subcontractor's considerable distance from the location of the work and consideration of alternative Specialty Subcontractors. The reimbursement amount will be the lesser of: (1) the advanced approved actual costs; (2) actual incurred charges; or (3) the current maximum per diem and mileage rates for the contract location within New York State as posted on www.gsa.gov. Specialty Subcontractors shall maintain all records of costs and provide them to the Department upon request. Any extra or unapproved expense to include personal travel or other non-NYS DOT business travel in the official transportation ticket shall be borne by the traveler. This shall include costs as a result of indirect-route or interrupted travel.

3. Service Charges. When work is performed by, and a fee is paid to a professional service, a work service, or an equipment owner/operator, the Contractor will be reimbursed the actual cost of the service fee plus 5% for service administration. This 5% will be applied only once to the service fee regardless of the firm making direct payments.

The rate for equipment with an operator shall not exceed the total of the Blue Book ownership rate, the Blue Book operating rate, and the wages for an appropriate operator. For specialized equipment or circumstances, the wages for an appropriate operator may be up to 150% of the prevailing wage rate.

C. Force Account Report. Payment for force account work will be made based on the following reports. Reports shall be submitted in a format acceptable to the Department. Force Account MURK forms are available from the Department's website at www.dot.ny.gov/main/business-center/contractors/construction-division/forms.

If the Engineer or his/her representative disagrees with the accuracy, applicability, or reasonableness of any portion of a Contractor's submission, he/she will promptly notify the Contractor.

1. Daily Summary. The Contractor shall deliver a daily summary of force account work to the Engineer in a format acceptable to the Department, not later than close of business on the workday following that for which the work is reported. The daily summary shall be dated and signed by the Contractor's authorized representative.

The Engineer's signature indicates that the record, as modified, is contemporaneous and accurate, but does not indicate concurrence with any dispute. The Engineer will annotate the record as necessary, sign and date, and provide a copy to the Contractor.

The summary shall contain:

- a. The contract number, other contract information, and the Contractor name/information.
- b. A brief description of the work performed and the work location for that day.
- c. A list of personnel by name, including the hours worked, and labor classification.
- d. A list of materials used to indicate the quantity and nature. The cost shall be documented later by proper receipts.
- e. A list of equipment used to indicate the number of hours used and the type, manufacturer, model, model year, size of equipment, and any required attachments.

2. Labor Summary. If there is an approved Force Account Estimate, in order to receive progress payments, the Contractor shall deliver to the Engineer a summary of labor used on the work. The Contractor shall provide the Weekly Summary of Force Account Labor using forms provided by the Department, and shall include the first and last name, labor classification, regular and premium hourly rates of pay, supplemental (fringe) benefit hourly rates, regular and premium hours worked, supplemental (fringe) benefit

amounts paid in cash, workers compensation percentage rates and limits, and/or other items necessary to calculate the amount due to the Contractor. Progress payments on the force account will not be made until the Contractor provides required documentation to the Engineer.

3. Force Account Report Submission. On completion of the specific force account work, the Contractor shall deliver to the Engineer a Force Account Report, wherein all labor, materials, equipment, and other charges are shown and totaled using forms provided by the Department. The Force Account Report shall be dated and signed by the Contractor's authorized representative. When the Contractor and the Engineer agree on the Force Account Report, the Engineer will prepare and submit a change order containing the Force Account Report to the Regional Construction Engineer for approval.

4. Force Account Review. The Regional Construction Engineer, or designee, will review the Force Account Report and make any notations, remarks or comments on this form that may assist in final payments. The emphasis of this review will be on labor rates, markups, workers compensation limits, material costs, equipment rates, insurance rates, and overall documentation. The Regional Construction Engineer will forward the change order to the Deputy Chief Engineer, Construction (DCEC). The DCEC, after review and approval, will forward the change order to the Office of the State Comptroller (OSC) for review and filing. Only after filing by OSC may the Engineer begin to process contract payments based on the change order, as the work is completed.

D. Time Related Compensation. The Contractor will only be eligible for extra compensation for expenses or costs which are identified as compensable. In the event any legal action is instituted against the State by the Contractor due to any such dispute for additional compensation, whether due to time related dispute, delay, acceleration, breach of contract, or otherwise, the State's liability will be limited to those items which are specifically identified as compensable under Section D.1. *Recoverable Contractor Costs*. Nothing in this subsection is intended to create any liability of the State not existing at common law or pursuant to the terms of this contract or to prevent the Contractor from filing a claim in the New York State Court of Claims. The remedies contained herein are exclusive.

1. Recoverable Contractor Costs. Only the following elements will be recoverable by the Contractor as "time related compensation" provided they are actual, reasonable and verifiable. Any such adjustment will be made via change order. Escalated costs will include unanticipated higher or lower costs attributable, with appropriate credits, to the performance of work or portions of work in an extended time period due to extenuating circumstances beyond the control of the Contractor.

a. *Extra work.* The Contractor will be reimbursed for extra work required due to a time related dispute in accordance with Section B. *Force Account Work*, less any appropriate credit.

b. *Labor.* The Contractor will be reimbursed for documented escalated labor costs determined in accordance with Section B.1.a. *Labor*.

c. *Materials.* The Contractor will be reimbursed for documented escalated material costs determined in accordance with Section B.1.b. *Materials*.

d. *Equipment.* The Contractor will be reimbursed for documented escalated equipment costs less appropriate credits, determined in accordance with Section

- B.1.c. *Equipment*. The costs for idle equipment will be 50% of the ownership rate set forth in Section B.1.c. *Equipment*. Idle time shall not exceed 8 hours per day, 40 hours per week, or the annual usage hours established in the Equipment Watch Cost Recovery software. The Contractor will be reimbursed for backup equipment costs, in accordance with Section B.1.c.(6) *Backup Equipment*. Equipment with an hourly ownership rate of less than \$2 or a current purchase price of less than \$500 will be considered as small tools and equipment and will not be directly reimbursed. No operating costs will be paid for idle equipment.
- e. *Insurance*. The Contractor will be reimbursed for documented additional or escalated insurance costs during the extended period.
- f. *Extended Contract Site Supervision and Management*. The Contractor will be reimbursed for documented additional or escalated contract site overhead costs during the extended period, including those for superintendents, project engineers, office engineers, CPM schedulers, clerical and other project level staff, but not including working forepersons. Allowable costs will include salary, Standard Labor Markup on salary, benefits not included in the Standard Labor Markup, and workers compensation insurance.
- g. *Extended Contractor's Field Office Costs*. The Contractor will be reimbursed for fees paid to service provider(s) during the extended period, for required Contractor's field office rental, utility charges, potable water, sanitation, cleaning, etc.
- h. *Bond Costs*. The Contractor will be reimbursed for documented additional or escalated bond costs during the extended period.
- i. *Home Office Overhead*. The Contractor will be reimbursed for home office overhead at 10% of items Section D.1.b. *Labor* and Section D.1.c. *Materials*. The Contractor will be reimbursed for home office overhead at 10% of documented escalated equipment costs under Section D.1.d. *Equipment*. No home office overhead will be paid for idle equipment.
- j. *Profit*. The Contractor will be reimbursed for profit at 10% of items Section D.1.b. *Labor* and Section D.1.c. *Materials*, except when Suspensions of Work Ordered by the Engineer applies, no profit will be allowed. The Contractor will be reimbursed for profit at 10% of documented escalated equipment costs under Section D.1.d. *Equipment*. No profit will be paid for idle equipment.
- 2. Recoverable Subcontractor Costs.** When costs are recoverable by a Subcontractor as "time related compensation," the Contractor will be reimbursed the actual, reasonable and verifiable subcontractor costs as outlined above in Section D.1., an additional 5% of those costs for subcontract administration, and costs for Contractor insurances in accordance with Section D.1.e. *Insurance*.
- 3. Non-Recoverable Costs.** In any dispute for time related compensation, the Department will have no liability for the following items and the Contractor shall make no claim for the following items:
- a. Home office overhead in excess of that provided in Section D.1.i. *Home Office Overhead*;

- b. Profit, in excess of that provided in Section D.1.j. *Profit*;
- c. Loss of anticipated or unanticipated profit;
- d. Labor inefficiencies and loss of productivity;
- e. Consequential damages, including but not limited to interest on monies in dispute, including interest, which is paid on such monies, loss of bonding capacity, bidding opportunities, or interest on investment, or any resultant insolvency;
- f. Indirect costs or expenses of any nature;
- g. Direct or indirect costs attributable to performance of work where the Contractor, because of situations or conditions within its control, has not progressed the work in a satisfactory manner.
- h. Attorney fees and dispute or claims preparation expenses.

E. Acceleration Compensation. The Contractor will be reimbursed for additional costs associated with acceleration directed by the Department in writing.

1. Recoverable Contractor Costs. The following elements will be recoverable by the Contractor as compensation for acceleration, provided they are actual, reasonable and verifiable. Recoverable costs include costs attributable, with appropriate credits, to the performance of work or portions of work during the original contract period, but at an accelerated rate, attributable to the Department's directed acceleration.

- a. *Labor.* The Contractor will be reimbursed for additional labor costs, primarily the premium portion of overtime;
- b. *Materials.* The Contractor will be reimbursed for additional material costs, primarily costs for accelerated production and delivery costs or additional fabrication costs associated with a revised delivery schedule;
- c. *Equipment.* The Contractor will be reimbursed for additional equipment costs, primarily costs for mobilization and demobilization of additional equipment required;
- d. *Insurance.* The Contractor will be reimbursed for additional insurance costs, including Commercial General Liability (CGL), Umbrella or Excess Liability, Special Protective and Highway Liability, Professional Liability/Errors and Omissions, Railroad Protective Liability, Marine Protection and Indemnity, and Pollution Liability insurances required, at the rate paid by the Contractor, in accordance with the method procured from its insurer(s).

(1) Contractors or Subcontractors that pay insurances based on a percentage of payroll will be paid that percentage of the portion of item Section E.1.a. *Labor* specified in the Contractor's insurance policy.

(2) Contractors or Subcontractors that pay insurances based on a percentage of gross sales will be paid that percentage of the total of items in Section E.1.a. *Labor*, Section E.1.b. *Materials*, Section E.1.c. *Equipment*, Section E.1.e. *Overhead*, and Section E.1.f. *Profit*.

- e. *Overhead.* The Contractor will be reimbursed for overhead at 10% of items Section E.1.a. *Labor*, Section E.1.b. *Materials* and Section E.1.c. *Equipment*.

- f. *Profit*. The Contractor will be reimbursed for profit at 10% of items Section E.1.a. *Labor*, Section E.1.b. *Materials* and Section E.1.c. *Equipment*.
2. *Recoverable Subcontractor Costs*. When costs are recoverable by a Subcontractor as acceleration compensation, the Contractor will be reimbursed the actual, reasonable and verifiable subcontractor costs as outlined in Section E.1. *Recoverable Contractor Costs*, an additional 5% of those costs for subcontract administration, and the Contractor's costs for insurance in accordance with Section E.1.d *Insurance*.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

CIVIL RIGHTS MONITORING AND REPORTING

The approved civil rights reporting software is *Equitable Business Opportunity Solution* (EBO). The EBO software is a web-based system provided to the Contractor at no cost. The Contractor shall use the approved civil rights reporting software on all contracts. The Contractor shall enter complete and accurate electronic data for each month, not later than the 15th of the following month, using EBO. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the Engineer to coordinate with contract payment submittals.

A. Civil Rights Officer(s). The Contractor shall designate a Corporate Civil Rights Officer, a Corporate DBE Representative, and a contract site Equal Employment Opportunity (EEO) Representative; and each Subcontractor shall designate a Corporate Civil Rights Officer, and a contract site Equal Employment Opportunity (EEO) Representative in the approved civil rights reporting software. The designated individuals shall have the responsibility to and shall be capable of effectively administering and promoting an active program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so. A single individual may fulfill multiple roles. The Contractor shall update the civil rights reporting software within 10 calendar days of any changes in these roles.

B. Workforce Participation Plan. At the pre-construction meeting, the Contractor shall submit an AAP 35 *Workforce Participation Plan* covering the Contractor's workforce and the workforce of its Subcontractors with subcontracts over \$10,000, together and coordinated with the contract progress schedule, that addresses the Equal Employment Opportunity goals.

The Contractor shall not start work until the Department has reviewed and accepted the *Workforce Participation Plan*. The Contractor shall submit a revised plan when a significant work force build-up or reduction will substantially affect goal attainment, or when a revised schedule is requested by the Department. Such revised *Workforce Participation Plan* must be agreed upon by the Department or the original will remain in effect.

C. Equal Employment Opportunity (EEO) Monitoring and Reporting. The Contractor's compliance with the EEO Requirements will be based on its Employment Utilization, affirmative action steps and its good faith efforts to meet the goals.

The Department, in evaluating the Contractor's good faith efforts to meet the EEO goal(s), will first analyze the Contractor's goal attainment on an individual contract. If the Contractor is not meeting the goal(s) for a single trade or contract, the Department will analyze, progressively, the Contractor's goal attainment on all contracts held by the Contractor within the county, the Region, and/or the State. This method of analysis shall be applied primarily but not solely to contracts with small population numbers. Other factors to be considered include, but are not limited to, the location of the contracts, the relative proximity of the contracts to each other, and the nature of the work.

1. Employee Utilization Data. The Contractor shall submit employee utilization data for its workforce and for each Subcontractor with a subcontract exceeding \$10,000 to the Department on a monthly basis, not later than the 15th of the following month. Data shall be submitted showing the total hours for each payroll week, separately through the end of the last full payroll week for that month. A payroll week only partially in a month shall be submitted for the next month. Payroll weeks are determined based on the firm's established payroll end date. Data shall include employee name, gender, ethnicity, and hours worked by trade(s) and classification. Employment utilization percentages are determined using data from the start of work up to and including the month being reported. For the purpose of

determining utilization percentages, the hours of female and minority employment are tabulated separately, and attainment percentages are calculated separately.

2. Federal-Aid Highway Construction Contractors Annual EEO Report. The Contractor shall submit all required employee utilization data to produce a Form FHWA 1391 *Federal-Aid Highway Construction Contractors Annual EEO Report* to the Department annually not later than August 15th, reflecting the work force during all or any part of the last payroll period worked in July, for all ongoing Federal-Aid contracts. The data shall indicate the number of minority men, minority women, non-minority men, and non-minority women employees currently engaged in each trade.

3. Monthly Training Progress Report. When training is required, the Contractor shall submit a monthly training progress report to the Engineer not later than the 15th of each month. In addition to each Monthly Training Progress Report, the Contractor shall provide the Engineer a summary of hours required to complete the various work elements of the training program, hours completed this period, and hours completed to date. This summary shall be provided in sufficient detail to allow the Engineer to determine whether the hours in the previous period are qualified hours under this pay item.

4. Contractor Compliance with EEO Requirements. If the Contractor fails to meet the EEO goal(s) for minorities or women, or demonstrate good faith efforts, the Department may require training of minorities and women to satisfy the employment goals. If the Contractor fails to meet the EEO goal(s), to demonstrate good faith efforts, or is in noncompliance with the nondiscrimination clauses, the Department may suspend additional contract payments, the Contractor may be directed to attend a hearing before the Contract Review Unit, or the Department may follow any other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part.

The Contractor may also be referred to the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), which has the sole authority to determine compliance with Executive Order 11246 and its implementing regulations. OFCCP may declare the Contractor ineligible for further Federal-Aid contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.

D. DBE Monitoring and Reporting. The Contractor shall utilize the DBEs committed to at pre-award to perform the work or supply materials for which each is listed. The Engineer will monitor the work to ensure that the identified DBEs perform the work as identified in the Contractor's commitments. Attainments will be measured based on payments made to DBEs.

If the Contractor has not executed a subcontract with a DBE before the DBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may not make commitments to use the firm on the contract as a DBE, and attainments will not be credited toward the contract goal.

If the Contractor has executed a subcontract with a DBE before the DBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may continue to use the DBE on the contract in accordance with the executed subcontract, and attainments will be credited toward the contract goal. Any new or extra work performed by the ineligible DBE not covered under the scope of the original executed subcontract will not be credited toward the contract goal. However, if the DBE/MBE/WBE/SDVOB is decertified because they were acquired by or merged with another firm that is not certified (i.e., Non-DBE/MBE/WBE/SDVOB), the portion of work that was

performed after the firm was decertified will not count towards the goal, even if the Contractor has executed a subcontract with the decertified firm. If the loss of credit towards the goal affects the Prime Contractor's ability to meet the overall contract goal, the Contractor shall make up for the shortfall or provide sufficient Good Faith Effort documentation.

When a contract is awarded with DBE commitment(s) that is less than the contract goal(s), the Contractor shall continue good faith efforts. The Contractor shall periodically review items that are available for DBE participation, typically before the beginning of a new construction season and when significant new items of work are added to the contract and conduct additional DBE solicitation.

If a Contractor, in order to meet the DBE contract goal or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, a DBE that does meet the eligibility criteria of 49 CFR Subpart D, the U.S. Department of Transportation may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

1. Report of Payments to Subcontractors and DBEs. The Contractor shall enter payment data into EBO for all Subcontractors and for all DBEs that are due a payment or have received a payment, within 14 days of receipt of payment from the Department, in order to measure DBE goal attainment and to monitor Contractor compliance.

The Subcontractor or DBE shall acknowledge receipt of payment not later than 7 calendar days after receipt. The date of receipt is: (1) the date the payment was made by electronic transfer to an account identified and agreed to by both parties; (2) the date the envelope containing the payment was date stamped by the U.S. Postal Service; or (3) the date the payment was physically provided to a previously authorized representative of the Subcontractor or DBE, either by the Contractor or by a delivery service.

The Contractor shall enter the final payment to each Subcontractor or DBE and designate it as such when the final payment is made, or as a separate \$0.00 entry indicating final payment has been made, prior to contract final acceptance, excepting those payments due from work contained in a change order(s) that have not been approved. The Subcontractor or DBE shall acknowledge receipt of final payment not later than 7 calendar days after receipt or by notification by the Contractor that a separate \$0.00 entry indicating final payment was entered in the civil rights reporting software.

2. Monitoring Commercially Useful Function (CUF) by DBEs. The Contractor shall monitor the work of the DBEs to ensure each performs a Commercially Useful Function and can be properly counted towards the Contractor's DBE commitments.

The Department will review the work, services or products provided by each DBE to verify the performance of a Commercially Useful Function. To determine whether a DBE has performed a Commercially Useful Function, the Department may also examine similar transactions, particularly those in which DBEs do not participate.

If the Department determines that some or all of a DBEs work does not constitute a commercially useful function only the portion of the work considered to be a commercially useful function will be credited toward the goal(s).

Upon request, each DBE Subcontractor shall provide additional documentation to the Engineer for the purposes of monitoring Commercially Useful Function. Such documentation may include, but not be limited to: confirmation that the workforce provided meets the requirements; a copy of purchase order(s) for all material incorporated into the work; and a copy of a rental agreement for all non-owned equipment used to perform the work to the Engineer.

Upon request, the Contractor shall provide a copy of a purchase order(s) for all material, supplies, articles, or equipment provided by a DBE Manufacturer, Fabricator, or Material Supplier and a copy of a purchase order(s) that details the work product(s) provided from each DBE Professional Service to the Engineer.

A DBE may present evidence to rebut a determination by the Department that the DBE is not performing a commercially useful function. For DBEs, commercially useful function determinations by the Department are subject to review by the Federal Highway Administration (FHWA) but the determination may not be administratively appealed to USDOT.

3. Revisions to DBE Participation. The Contractor shall obtain Department approval for substantial revisions, as defined below, in DBE participation prior to implementing any proposed change through submission of Form AAP16 *Request to Modify DBE/MBE/WBE/SDVOB Participation*. Once approval is granted by the Department, the Contractor shall submit a revised AAP19 *DBE Schedule of Participation* using the Department approved civil rights reporting software. Unless approval for the revision is granted, Contractor will not be entitled to any payment for work or material committed to a DBE unless it is performed or supplied by the approved DBE.

If the reduction of the DBE's work or the removal of the DBE, including for reasons of commercially useful function violations, causes the DBE participation to fall below the goal(s), the Contractor shall make good faith efforts to find another DBE to substitute for the original DBE to perform at least the remaining amount of work as the DBE that was terminated, to the extent needed to meet the contract goal(s).

Upon request, the Contractor shall provide documentation of good faith efforts within 7 days, which may be extended for an additional 7 days if necessary, at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

A DBE may be substituted if the work committed to the DBE is deleted or reduced by the Department and enough work remains to substitute an equal commitment amount to the affected DBE. If not enough work remains, the Department may relieve the Contractor from attaining that portion of the commitments.

The following modifications will be considered a substantial revision in DBE participation:

- Adding, removing or substituting a DBE.
- Adding new item(s) of work to a DBE within a core (3 digit) contract pay-item number not currently approved.
- Reducing the dollar value of or eliminating the DBE's item(s) of work or a portion of the work.
- Changes in participation due to major differences between estimated quantities and actual work performed.

The following modifications will not be considered a substantial revision in DBE participation:

- Increasing the dollar value of an item(s) of work or adding new item(s) of work within the same core (3 digit) contract pay-item number to a DBE.
- Substituting similar dollar values of work within a currently approved core (3 digit) contract pay-item number.
- Changes in participation due to minor differences between estimated quantities and actual work performed.

In accordance with 49 CFR 26.53(f)(1), the Contractor shall not terminate a DBE listed on the approved DBE Participation Plan without the prior written consent of the

Department. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Department will consent only if the Prime Contractor has good cause to terminate the DBE firm. Good cause includes, at a minimum, one the following circumstances:

- The listed DBE fails or refuses to execute a written contract:
- The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor:
- The listed DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements:
- The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness:
- The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- The Department has determined that the listed DBE is not a responsible contractor,
- The listed DBE voluntarily withdraws from the project and provides to the Department written notice of its withdrawal;
- The listed DBE is ineligible to receive credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract;
- Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

Before submitting its request to terminate and/or substitute a DBE to the Department, the Contractor shall give notice in writing to the DBE subcontractor, with a copy to the Engineer, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor shall give the DBE five days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Department may approve a response period shorter than five days.

Failure of a Contractor to obtain Department approval prior to reduction, termination or substitution of a DBE may be deemed a breach of contract subject to appropriate actions such as, but not limited to, a responsibility review, withholding contract payments, and/or loss of credit towards the DBE goals.

4. Contractor's Compliance with DBE Program Requirements. If the Contractor fails to meet the DBE participation commitment(s), to exert a good faith effort, or otherwise fails to comply with the DBE Program requirements, the Department will take appropriate actions. Such actions may include, but not be limited to: suspension of contract payments; direction to the Contractor to attend a hearing before the Department's Contract Review Unit; or any

other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part of the contract agreement.

Where the Department determines that the Contractor is not in compliance with the requirements of the contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the DBE participation goal, the Contractor will be obligated to pay to the Department Liquidated Damages.

Such Liquidated Damages for failure to meet the DBE requirements shall be calculated as an amount equaling the difference between the amount committed to the DBEs by the Contractor at award and the amount actually paid to the DBEs for work performed or materials supplied under the Contract, not including any amount for work deleted by the Department or work which a DBE declined or failed to reasonably perform.

If a determination has been made which requires the payment of Liquidated Damages and such identified sums have not been withheld by the Department, the Contractor shall pay such Liquidated Damages to the Department within sixty (60) days after they are assessed.

The Contractor may also be referred to the USDOT for possible suspension or debarment as provided in 49 CFR 26 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

E. Compliance Reviews. The Department conducts annual civil rights contract compliance reviews of selected Federal-Aid contracts in accordance with 23 CFR 230.409. A compliance review consists of a thorough review of all civil rights contract requirements, including Nondiscrimination in Labor/Employment, EEO, Training, and DBE requirements. A Contractor will typically not be selected for more than one compliance review per year statewide. Based on contract monitoring and/or the results of compliance review(s), the Department may conduct a review of some or all ongoing contracts with a single Contractor, regardless of funding source.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

MATERIAL ACCEPTANCE RECORDS.

Whenever any specification provides for Approved List, Material Certification or Manufacturer's Certifications as a Basis of Acceptance, the Department reserves the right to sample and/or test any material prior to incorporation in the work. Approved List shall mean the list which is current on the date of incorporation of material into the work. The Contractor may request reimbursement from the Department for additional costs for materials that were purchased after contract award and prior to the product being removed from the Approved list but are removed from the Approved list after contract award.

Some specifications reference a Manufacturer's Certification or a Material Certification as evidence of acceptability of specific materials or products. A Manufacturer's Certification can only be properly executed by the Manufacturer or Producer of the material or product. When manufactured products are subsequently modified by another party such as a Fabricator or provided by a Material Supplier other than the Manufacturer, an additional Material Certification from each party that modifies or takes ownership of the product prior to the installation of the material shall be provided in addition to all of the previous certifications.

A. Material Certification. When products are supplied by a Manufacturer, Producer, Fabricator, or Material Supplier, a Material Certification that includes the essential components outlined below shall be provided to the Engineer.

1. Identification of Manufacturer or Producer. Name of the company and address of its manufacturing or producing facility.

2. Identification of Material or Product. Generic name of the material or product and the corresponding Section 700 Materials and Manufacturing material code.

3. Identification of Shipment. Sufficient detail to describe the quantity contained in the shipment, the contract number and a date of shipment. A Material Supplier's Certification shall clearly indicate that the shipment is all or a portion of the quantity detailed on the accompanying Manufacturer's Certification.

4. Statement of Conformance. The certification shall definitively state that the material contained in the shipment meets the requirements of a specific Department specification or a specific specification or standard of another agency (i.e., ASTM, AASHTO, AWWA, etc.).

If the material in the shipment contains steel and/or iron, the certification shall definitively state that the material is or is not of domestic origin. Acceptable statement is: "Conforms (or Does not conform) to the requirements of 23 CFR 635.410 Buy America Requirements."

If the product supplied has been altered subsequent to the certification by the manufacturer, the Material Certification shall definitively state that the material or product contained in the shipment meets the requirements of an identified contract specification.

5. Certification Execution. The certification shall be signed by a person authorized to legally bind the company, as indicated by statement or title/position. Notarization of the signature is not required.

REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS.

BUY AMERICA REQUIREMENTS

In accordance with 23 USC 313, 23 CFR 635.410, and the Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law's (BIL), permanently incorporated predominantly steel and/or iron materials, manufactured products, and construction materials shall be domestically produced.

A. Control of Materials.

To qualify as domestic, all manufacturing processes, including melting, manufacturing, fabricating, grinding, drilling, welding, finishing, and coating of any product containing steel and/or iron materials, must have been performed in the United States. A domestic product is a manufactured steel and/or iron material/product and/or construction material that was produced in one of the 50 States, the District of Columbia, or in the territories and possessions of the United States. Raw materials used in the steel and/or iron materials may be imported. Raw materials are materials such as raw iron ore, and waste products which are used in the manufacturing process to produce the steel and/or iron material/product. The FHWA has granted a nationwide waiver for pig iron and processed, pelletized, and reduced iron ore. Waste products include scrap (i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, steel trimmings from mills or product manufacturing). Extracting, crushing, and handling the raw materials which are customary to prepare them for transporting are exempt from Buy America. The use of foreign source steel billets or iron ingots are not acceptable under Buy America. All items, regardless of origin, shall comply with their individual specification requirements and with the requirements stated elsewhere in this subsection. The Contractor shall ensure the domestic steel and/or iron materials are supplied in conformance with the above referenced laws.

The Buy America provisions only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the infrastructure project, such as temporary scaffolding. In addition, it does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

Federal-Aid Contracts

For Federal-Aid contracts, all iron and steel, manufactured products, and construction materials incorporated into the contract shall be produced/manufactured in the United States as follows:

- a. All iron and steel used in the project shall be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. All manufactured products used in the project shall be produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. Manufactured products mean articles, materials, or supplies that have been: (i) processed into a specific form or shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- c. All construction materials shall be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. Construction materials includes an article, material, or supply that is or

consists primarily of:

- **Non-ferrous metals:** All manufacturing processes means initial smelting or melting through final shaping, coating and assembly occurred in United States;
- **Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables):** All manufactured processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States;
- Glass (including optic glass): All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States;
- **Fiber optic cable (including drop cable):** All manufacturing processes, from the ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others;
- **Optical fiber:** All manufacturing processes, from initial preform fabrication stage through the completion of the draw, occurred in the United States;
- **Lumber:** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States;
- **Engineered wood:** All manufacturing processes, from initial combination of constituent materials until the wood product is in its final form, occurred in the United States; or
- **Drywall:** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material. Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than construction materials.

Construction materials do not include an item of primary iron or steel; a manufactured product; or Section 709179(c) materials. 709179(c) materials include cement or cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives).

An article, material, or supply should be classified into only one of the following categories: (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed. The classification of an article, material, or supply falling into one of the four categories must be made based on its status at the time it is brought to the work site for incorporation into the project.

For Federal-Aid Contracts, FHWA allows the Contractor to permanently incorporate in the construction of the contract a minimal amount of foreign steel and/or iron materials, if the

combined cost of such materials does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The combined cost of foreign steel and/or iron materials will be the value of the materials as they are delivered to the contract, documented by invoice or bill of sale to the Contractor.

For Federal-Aid Contracts, USDOT's Waiver of Buy America Requirements for De Minimis Costs and Small Grants allows the Contractor to permanently incorporate in the construction of a contract (under a single financial assistance award) a minimal amount of foreign manufactured products and construction materials, if the total value of the non-compliant products/materials is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project. This does not apply to iron and steel subject to the requirements of 23 U.S.C. 313 on financial assistance administered by FHWA. The de minimis threshold in 23 CFR 635.410(b)(4), and stated above, continues to apply for steel and iron. The "total applicable costs for the project" are defined as the cost of materials (i.e., steel/iron, manufactured products, and construction materials) used in the project that are subject to Buy America, including materials that are within the scope of an existing waiver. Based on USDOT's waiver, if the total amount of federal financial assistance applied to the project, through awards or subawards, is below \$500,000, then Buy America does not apply.

B. Waivers.

Federal-Aid Contracts.

The Contractor may request a waiver if it can be demonstrated that:

- a. Applying a Buy America preference would be inconsistent with the public interest (a "public interest waiver");
- b. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (a "nonavailability waiver"); or
- c. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an "unreasonable cost waiver").

The Contractor shall submit a waiver request to the Engineer which includes a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and including copies of all documentation verifying the unavailability of the material or product.

The Department will submit approved waiver requests to the FHWA for review. The Contractor shall investigate and respond to any public comments made to the FHWA Office of Program Administration, indicating that a domestic supplier can provide the material for which a waiver has been requested. Final approval of the Buy America Waiver request will be made by the Administrator, Federal Highway Administration. The waiver will be effective when it is posted in the Federal Register.

C. Certifications.

A Manufacturer's Certification is required to certify that the material/product is of domestic origin. Acceptable statements are: "Conforms (or Does not conform) to the requirements of NYSDOT Standard Specifications §106-11 *Buy America*" (acceptable for steel/iron, manufactured products and construction materials) or "Conforms (or Does not conform) to the requirements of 23 CFR 635.410 *Buy America Requirements*" (acceptable for steel/iron and manufactured products only) or "Conforms (or Does not conform) to the requirements of the Build America, Buy America Act" (acceptable for construction materials only). Certifications shall comply with *Material Acceptance Records*.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

USE OF UNITED STATES-FLAG VESSELS

In accordance with the Cargo Preference Act and 46 CFR 381, the requirements below apply to material, equipment, or commodities that are acquired for a specific Federal-aid construction contract and transported on ocean vessels (or transported across the Great Lakes). The requirements are not applicable to goods or materials that come into inventories independent of a specific Federal-aid construction contract.

A. The Contractor shall utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph A to both the Contracting Officer (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

C. The Contractor shall insert the substance of the provisions of this section in all subcontracts issued pursuant to the contract.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

Appendix 12-10

Summary of Federal DBE Commitments and Bid Requirements

Letting Date [Redacted]

Sponsor's Name: [Redacted]
 Address: [Redacted], New York

RE: Project Description: [Redacted]

Project Location: [Redacted]

PIN Contract [Redacted] as Stated in the Advertisement
 DBE Goal [Redacted]

Dear [Redacted]

We hereby submit a DBE commitment of [Redacted] for the above-referenced project.

Identified below are the commitment(s) to certified* DBEs for this contract:

<u>DBE Name and Address:</u>	<u>Work Category**</u>	<u>% DBE Credit (A)</u>	<u>\$ Commitment (B)</u>	<u>DBE Credit \$ (AxB)</u>
Example DBE Name: Drainage R Us Address: 2543 Lexington Street, Troy, NY 12180	Construction	100	\$1,120,000	\$1,120,000
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Address: [Redacted]				
Total Commitment:				

*Only submit DBE(s) that you have verified are certified to perform/supply the identified commitments.

** Work Category:

- Construction, Manufacturers, Fabricators, Professional Service, Work Service, Trucking Firm = 100% Credit
- Material Supplier = 60% Credit
- Distributor = 40% Credit
- Broker (Fees and Commissions Only) = 100% Credit

NOTE: In addition to the summary of commitments shown above, you shall submit DBE commitments/confirmations (i.e., AAP 20, AAP22, or AAP 23 depending on Work Category) with your bid submission for each DBE firm listed above. All Bidders are to submit a completed CONR 80LL. In addition, if you do not meet the DBE Goal, you shall submit sufficient Good Faith Effort documentation with your bid submission. No supplemental information will be considered after Letting.

I hereby confirm that the DBEs are certified to perform the commitments shown above. Upon notification that my commitments and/or Good Faith Efforts have been accepted by the Sponsor, I shall enter exactly (as shown) all of the DBE commitments identified here, into Equitable Business Opportunity Solution (EBO), with no additions, substitutions, or reductions.

Submitted By:

Name: [Redacted]
 Title: [Redacted]
 Company Federal Tax ID [Redacted]

PIN

NYSDOT AAP14LL*

*Note: This form is the local-let version of the NYSDOT AAP 14. It was modified to capture specific language used when administering local-let federal aid projects.

Appendix 12-11 CONR 80LL Bidders List for Local Let Program Use Only is located on the Office of Construction- Civil Rights- Forms and Manuals Site: [Civil Rights](#)

To download the form directly, click here:

<https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/Form%20CONR%2080LL%20-%20Bidders%20List%20for%20Local%20Let%20Program%20Use%20Only.xlsx>

New York State
Department of Transportation
Local Projects Manual

Chapter 13
Civil Rights Requirements



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Acronyms

ADA	Americans with Disabilities Act	MBE	Minority Business Enterprise
ADP	Advance Detail Plans	M/WBE	Minority and Woman Business Enterprise
A&E	Architectural & Engineering	NYSDOL	New York State Department of Labor
CAM	Construction Administration Manual	NYSUCP	New York State Unified Certification Program
CFR	Code of Federal Regulations	NYSDOT	New York State Department of Transportation
DBE	Disadvantaged Business Enterprise	ODO	New York State Department of Transportation Office of Diversity and Opportunity
EBO	Equitable Business Opportunities	PEO	Presidential Executive Order
EEO	Equal Employment Opportunity	RLO	Responsible Local Official
EI	Engineering Instruction	RLPL	Regional Local Project Liaison
FHWA	Federal Highway Administration	SDVOB	Service-Disabled Veteran-Owned Business
GFE	Good Faith Effort	USDOJ	United States Department of Justice
HDM	Highway Design Manual	USDOL	United States Department of Labor
LEP	Limited English Proficiency	USDOT	United States Department of Transportation
LPM	Local Projects Manual	WBE	Woman- Business Enterprise

NOTE

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter references) can be found at the end of this chapter in **Section 13.15 References**.

13.1 INTRODUCTION

This chapter provides an overview of federal and state Civil Rights laws, rules, regulations, and presidential and gubernatorial executive orders for locally administered transportation projects. The New York State Department of Transportation (NYSDOT) policy ensures equal opportunity and prevents discrimination in all its activities. NYSDOT and project sponsors (denoted as “Sponsor[s]” hereafter) share this compliance responsibility in meeting federal and state Civil Rights law requirements on locally administered transportation projects. Various chapters within the Local Projects Manual (LPM), as well as NYSDOT’s Standard Specifications, NYSDOT’s Manual of Uniform Recordkeeping (MURK) Part 1A Construction Administration Manual (CAM), and the Highway Design Manual (HDM) provide additional Civil Rights functional guidance.

13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes require recipients¹, including the NYSDOT, of federal financial assistance to ensure that no one is excluded from participation in, denied the benefits of, or subjected to discrimination based on race, color, or national origin in any federally assisted program and activity.

Per **23 CFR 200.9**², Sponsors that receive Federal Highway Administration (FHWA) funds through NYSDOT must have a Title VI Program subject to review and approval by NYSDOT. The Title VI Program’s purpose is to prohibit discrimination and ensure nondiscrimination through policies, procedures, benefits and services, and regular program reviews. In addition, the Title VI Program requires Sponsors to specify how they will implement their Title VI responsibilities.

NYSDOT is required to perform formal annual compliance reviews of Sponsors receiving federal funds. Sponsors will be required to document their Title VI compliance through a NYSDOT audit review that includes an evaluation of how they administer their overall Title VI Program throughout all program areas.

Sponsors must summarize their efforts regarding how they monitor nondiscrimination in programs and activities that impact the public. The program areas include, but are not limited to:

- Planning
- Environment
- Project Development (Design)
- Right-of-Way

¹ The term recipient is used to refer to an entity or entities that directly receive federal financial assistance from the United States Department of Transportation (USDOT) through the Federal Highway Administration (FHWA).

² The term subrecipient is used to refer to an entity or entities that indirectly receive federal financial assistance from the USDOT through the FHWA. For consistency throughout this Manual, the term Sponsor(s) will be used to refer to subrecipient(s).

- Construction
- Maintenance
- Traffic Safety
- Research
- On-the-Job Training Programs

Sponsors have the option of:

- Adopting by a resolution [Appendices 13-1 through 13-4](#) of a [Title VI Plan](#) and applicable procedures, or
- Developing their own Title VI Plan with approval from [NYSDOT's Office of Diversity and Opportunity \(ODO\)](#).

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

13.2.1 Sponsor's Title VI Requirements

A Sponsor's Title VI Plan must have policies and procedures in place to ensure Title VI compliance. These policies include:

- Title VI Assurances (signed and dated),
- Nondiscrimination Policy Statement (signed and dated),
- Title VI Plan (signed and dated) that includes Limited English Proficiency (LEP) Plan,
- Americans with Disabilities Act (ADA) Transition Plan,
- Monitoring/Review Process, Data Collection, and Analysis of participants,
- Designated Title VI Coordinator and an outline of their responsibilities,
- Complaint Form, with applicable processes, procedures, and issue resolution process,
- Public Involvement Plan that includes Public Dissemination of Title VI Information, and
- Schedule of Title VI Training (with recorded dates and target audience).

The Sponsor's overall Title VI Plan ([Appendices 13-1 through 13-4](#)) must include all of the above areas. Each area must be addressed in its entirety.

Fillable forms for all required policies and procedures can be found on NYSDOT website.

13.2.1.1 Sponsor's Title VI Assurance

The Sponsor's Responsible Local Official (RLO) or designee must have a signed and dated Title VI Assurance in place. The Sponsor must ensure that all programs, policies, procedures, activities, services, and facilities are implemented and operated in a nondiscriminatory manner. Title VI Assurance is a shared responsibility for all involved in delivering federal and state-funded projects.

13.2.1.2 Sponsor's Nondiscrimination Policy Statement

The Sponsor must maintain a current Title VI/Nondiscrimination Policy Statement. The Statement must inform the public of the Sponsor's commitment to nondiscrimination in all programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability, or low-income status, or limited-English proficiency be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity administered by the Sponsor or the Sponsor's contractors/subcontractors whether it is federally assisted or not. The policy statement must be signed and dated by the RLO or designee. The Statement must include the following provisions:

- A commitment to the nondiscrimination provisions of Title VI,
- Disseminate Title VI information to the general public and publish where appropriate,
- Ensure Title VI provisions are in all contracts and subcontracts with subcontractors,
- Participate in training offered on Title VI and other nondiscrimination requirements,
- Extend subcontracting opportunities to Disadvantaged Business Enterprises (DBEs),
- Maintain current and accurate records that demonstrate and document Title VI compliance, including collecting racial and ethnic data on persons impacted,
- Appoint a Title VI/Nondiscrimination Coordinator with direct access to the RLO, and
- Develop a complaint process and take affirmative action to correct any deficiencies within a reasonable time.

13.2.1.3 Sponsor's Title VI Plan

Sponsors must develop and maintain a Title VI Plan that documents procedures for complying with Title VI Program requirements. Sponsors may use the Sample Title VI Template ([Appendix 13-1 through 13-4](#)) or develop their own. Sponsors that develop their template must submit the plan for approval to NYSDOT. The Sponsor must have procedures to review their processes and collect and analyze data.

13.2.1.4 Monitoring and Review Process

Sponsors must develop procedures for identifying and addressing potential discrimination or discriminatory practices within their departments/agencies. The Title VI Plan must include procedures on how the Sponsor's departments/agencies are monitored and reviewed for Title VI

compliance and outline procedures to eliminate and address discrimination and resolve deficiencies when non-compliance occurs. In addition, Sponsors administering federal and state aid contracts must monitor prime contractors, subcontractors, consultants, and sub-consultants for Title VI compliance.

13.2.1.5 Data Collection and Analysis

Sponsors must develop procedures for collecting statistical data (race, color, national origin, and sex) of participants in and beneficiaries of the Sponsor's programs. Collecting data helps New York State identify and prioritize problem areas and evaluate policies and programs' effectiveness to ensure nondiscrimination. The Title VI Plan must describe how the Sponsor plans to collect Title VI-related data on an ongoing basis.

13.3 LIMITED ENGLISH PROFICIENCY (LEP)

Presidential Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency" contains two significant components. The first component is designed to improve enforcement and implementation of Title VI obligation to prohibit discrimination based on national origin. The obligation based on national origin includes prohibiting recipients (NYSDOT) and sub-recipients (Sponsors) of federal financial assistance from discriminating against individuals for whom English is not their first language by failing to provide meaningful access to services, programs, and activities for individuals who have LEP.

The second component requires all federal agencies to meet the same standards as federal financial assistance recipients and Sponsors in providing meaningful access for LEP individuals to federally funded programs. Sponsors and the federal government, based on available resources, must provide materials in other languages or interpreters at meetings when individuals have LEP.

Sponsors should consider the following measures to implement LEP strategies:

- Written translation of the Sponsor's vital documents,
- Language Implementation Plan,
- Bilingual staff for translation,
- Language needs assessments or efforts which consider:
 - The number or proportion of LEP persons in the eligible service population,
 - The frequency in which LEP individuals encounter the Sponsor's programs or activities, and
 - The Program's importance, activity, or services provided by the Sponsor.

Outreach materials, including public meetings/hearings and announcements, must be available in languages the affected population understands. Public meetings and hearings should be held at both geographically and structurally accessible facilities. Efforts should be made to schedule public meetings and hearings that do not conflict with the impacted communities' work schedules

and should be held in facilities easily accessible by public transportation. Public meetings and hearing announcements should indicate that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP. If requested, spoken and sign language interpreters and alternately formatted materials should be provided at no cost.

Outreach materials, including public meeting/hearing announcements, must be available in languages the affected population understands.

13.4 ENVIRONMENTAL JUSTICE

Presidential Executive Order (EO) No. 12898, “Federal Actions 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. **Title 23 CFR 450** requires States and Metropolitan Planning Organizations 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 impacts, on minority populations and low-income populations.
2. To ensure all potentially affected communities’ full and fair participation 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.

13.5 THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT (ADA)

As amended, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any federally assisted program or activity. **Section 504**, codified in **49 CFR Part 27**, prohibits discrimination based on an individual’s disability in transportation-funded programs, activities, and services receiving or benefiting from federal financial assistance from the USDOT via FHWA.

The Americans with Disabilities Act (ADA, 1990) is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life regardless of funding source. **Title II, 28 CFR Part 35** of the ADA pertains explicitly to state and local governments.

Sponsors must implement the following as part of their oversight responsibilities:

- Ensure that all departments are informed of their responsibilities to provide accessibility in their activities, programs, services, and facilities (i.e., department's public rights-of-way).
- Have a designated 504/ADA Coordinator responsible for coordinating Section 504/ADA compliance with all departments.
- Ensure the Sponsor and its sub-recipients apply appropriate accessibility standards to their transportation facilities as defined in NYSDOT's HDM.
- Ensure all complaints filed under Section 504 and/or the ADA are processed following established complaint procedures.
- Ensure that information in electronic format is accessible to people with disabilities.
- Provide public notice of the Sponsor's ADA provisions.
- Conduct self-evaluations.
- Ensure their ADA Transition Plan is in place and updated, as noted in their ADA Transition Plan. See [Section 13.5.3: ADA Transition Plan](#).

The Sponsor must have a Designated ADA Coordinator .

13.5.1 Nondiscrimination

[Title 49 CFR 27.7](#) requires a Sponsor's programs or activities that receive federal financial assistance when providing aid, benefits, services, activities, and public facilities to be accessible to 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 when Sponsors respond to their requests. Communication venues and media (public meetings, announcements, and publicity) must all be accessible. During project development, any public meetings or outreach shall comply with Title 49 requirements.

Regardless of where the funding comes from, all public facilities and programs must be accessible, per the ADA.

13.5.2 Self-Evaluation

[Title 28 CFR 35.105](#) is the U.S. Department of Justice (USDOJ) Title II regulation that requires public entities, even if they do not receive federal funds, to evaluate their current policies, practices, programs, services, and activities and to make the self-evaluation available for public comment. In addition, the ADA Transition Plan Checklist, which can be found in [Appendix 13-2](#), maybe used for self-evaluations.

[Title 49 CFR 27.11](#) requires recipients (NYSDOT) and subrecipients (Sponsors) to conduct self-evaluations of policies, programs, practices, services, and activities for compliance with the ADA.

Self-evaluations are critical to improving your agency's processes.

13.5.3 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 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 needs to only conduct self-evaluations (see **Section 13.5.2**).

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 to its programs, activities, or pedestrian facilities, and the schedule to correct any non-compliance; this should include identifying the party responsible for implementing the corrective action to ensure all Sponsor facilities are accessible to individuals with disabilities. The Sponsor shall provide an opportunity for interested persons or organizations to participate in the development of the transition plan and a copy of the plan shall be made available for public inspection. For more information, refer to **28 CFR 35.150(d)(1), (3)(i-iv)**.

The ADA Transition Plan Checklist (found in **Appendix 13-2**), the ADA Transition Plan (found in **Appendix 13-3**), and the ADA Proposed Work Plan and Schedule (found in **Appendix 13-4**, which are fillable forms) were developed to assist Sponsors in implementing their ADA Transition Plans. In addition, Sponsors are strongly encouraged to use the ADA Transition Plan Checklist located in Appendix 13-2 as a guide when preparing their own ADA Transition Plan.

NYSDOT has its own **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 and periodically refreshes the statewide list.

NYSDOT may construct sidewalks, curbs, and curb ramps alongside State highways located in Villages (**NYS Highway Law, Article 3, Section 46**), Towns (**NYS Highway Law Section 140**), and Cities (**NYS Highway Law, Article 12-B, 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 below.

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), 35.151(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.

13.5.4 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, resurfacing, or repair, as well as any work undertaken by the Sponsor's forces. Therefore, access to existing and proposed pedestrian facilities in a public right-of-way must be provided. The applicability of design and construction standards is in **Chapter 9** of this manual.

The USDOJ and the FHWA clarified in the **2013 DOJ/DOT Joint Technical Assistance Informal Guidance Document** that "pavement alteration" activities require a Sponsor to address curb ramp compliance and distinguish between "pavement maintenance" activities that 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 curbs or other barriers restrict 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,
- resurfacing,
- new construction,
- rehabilitation, and
- reconstruction.

Curb ramps and detectable warnings must 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.

Structural changes to existing conditions must be clearly documented that they meet ADA standards.

See [NYS DOT HDM Chapters 2, 7, and 18](#) and the [DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental](#) for additional guidance.

13.6 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

The [Federal Aid Highway Act of 1968 \(23 USC 140\(a\) and 23 CFR 230\)](#) ensures nondiscrimination in employment based on race, color, religion, sex, or national origin on any federally aided projects. Sponsors are required to include EEO provisions in all their federal aid construction contracts by physically including Form FHWA 1273, [Required Contract Provisions Federal Aid Construction Contract](#) in the contract proposal. EEO requirements are included in [Appendix 12-1, Chapter 14, and Chapter 15](#).

Sponsors must identify employment goals for each specific contract; see [Chapter 12](#). These goals are included in [Appendix 12-1](#), which is included 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 weekly in NYSDOT’s civil rights reporting software [Equitable Business Opportunity \(EBO\)](#). Sponsors must review EBO and compare the EEO Workforce Utilization Report to the certified payroll system. EEO goals and attainments are also monitored by both the RLPL and Sponsor. When the EEO goals are not met, the Contractor must provide Good Faith Effort (GFE) documentation to the Sponsor. GFE are action-oriented steps taken to show that all concrete, tangible, result-oriented efforts were exhausted through all reasonable means to comply with affirmative action hiring of the contract EEO goals.

Minority and female workforce participation goals must be maintained on a month-to-month basis or GFE needs to be provided.

13.7 APPRENTICESHIP AND TRAINING PROGRAMS

Training is a Civil Rights activity that may address the under-utilization of minorities, females, and economically-disadvantaged persons in highway construction and engineering contracts. The Sponsor must include **Item 691 Training and Apprenticeship Requirements** if the construction cost is estimated above \$5 million. If the construction cost is below \$5 million and there is an opportunity for training, the 691 Training items can be included.

An apprenticeship training program must be registered with the **NYS Department of Labor (NYS DOL)** and approved by NYSDOT. Only FHWA-approved On-the-Job Training programs or **NYS DOL/U.S. Department of Labor (USDOL)** registered apprenticeship programs may be used to fulfill training requirements. The review process and approval process are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate training program activities with their RLPL.

The training item can be waived if all parties agree that the project has no meaningful and effective training.

Per EI 21-014, training requirements may be waived. If the construction cost is below \$5 million, the Sponsor may submit a waiver request, which must be documented in the PS&E submission.

13.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Title 49 CFR 26.45 requires NYSDOT to submit a programmatic **DBE Plan** to the USDOT. Therefore, Sponsors must use NYSDOT's approved DBE Plan.

Only firms certified through the New York State Unified Certification Program (NYSUCP) as DBEs may be used to accomplish DBE participation goals set on federal aid contracts. The **NYSUCP DBE Directory** is the sole resource for identifying DBEs. Firms not certified as DBEs may apply for certification online with any of the four Certifying Partners listed on the Directory's home page. NYSDOT's DBE Certification Unit assists with **DBE Certification**. NYSDOT does not pre-qualify nor recommend firms for participation.

DBE firms must be certified at the time of project award.

13.8.1 DBE Contract Requirements / Establishing DBE Goals

13.8.1.1 Consultant and Professional Services

13.8.1.1.1 Architectural & Engineering (A&E) Consultant Contracts

All federally aided A&E consultant contracts must encourage DBE participation. The RLO's Project Manager or designee 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 using EBO. For more information about consultant selection procedures, see [LPM 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 and NYSDOT's Office of Diversity and Opportunity (ODO), will determine the DBE goal during the final stages of drafting the Request for Proposals. This goal is based on the value of the contract, the type of work involved that could be subcontracted, and the availability of DBE to accomplish the work. Payment data shall be reported by the prime consultant to the Sponsor, utilizing the EBO system each time a payment is made.

13.8.1.2 Construction Contracts

The Sponsor or their designee will ensure that the construction contract includes participation goals in accordance with NYSDOT's current [DBE Program Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. To set the DBE goal, use the following documents:

- Table of Construction Contract Groups,
- Multi-Regional (Market Area) Map,
- Baseline DBE Goal Selection Chart, and
- The assessment portion of the Construction Contract DBE Goal Assessment Form.

These forms and instructions can be found on [NYSDOT's Civil Rights website](#).

13.8.2 DBE Goal Assessment Process

The Sponsor may request a modification of the DBE goal. To implement a modification to the DBE goal to either increase, reduce, or be exempt during final design, the Sponsor is required to complete the DBE Goal Assessment Form. For example, increases might be appropriate for those projects with additional opportunities for DBE participation due to the project's variety of operations or magnitude. Conversely, a reduction or exemption could be sought for projects with no significant DBE participation opportunities, perhaps due to being specialized in nature with few pay items. The Sponsor must submit the [DBE Goal Assessment Form](#) to the RLPL before contract document review and approval, but preferably after authorization of Detailed Design. Refer to [HDM Chapter 21](#), "Contract Plans, Specifications, and Estimates," or [NYSDOT's Civil Rights website](#).

Approved revisions to the DBE goal must be included in the project's advertisement, contract proposal, and contract (see [LPM Chapter 14](#) for guidance).

A DBE goal assessment must be performed at ADP to ensure the goals are appropriate to the project.

13.8.3 DBE Goal and Good Faith Efforts (GFE) Documentation

The Sponsor or their designee must set the goal, monitor, and report on a contract's DBE participation. If the goal is not met, the Sponsor must collect documentation of good faith efforts demonstrated by the contractor. Further details on setting DBE goals can be found in [LPM Chapter 12](#); details on GFE documentation can be found in [LPM Chapter 14](#) and [LPM Chapter 15](#) and [NYSDOT's MURK Part 1A CAM Section 102-12](#).

Sponsors must work with NYSDOT staff to ensure data and process quality throughout the project delivery and construction processes. In addition, NYSDOT requires civil rights reporting through the EBO software to monitor construction contract payments, DBE goals, DBE commitments, and DBE attainments. Further details on EBO can be found in [LPM Chapter 14](#).

GFE must show concrete, tangible, result-oriented efforts were taken to meet the goal.

13.8.4 NYS Executive Order 162 Ensuring Pay Equity

[NYS EO 162](#), "Ensuring Pay Equity by State Contractors" issued in January 2017, is intended to help assure State laws are being complied with by requiring contractors and consultants to provide documentation demonstrating whether women are being paid the same salaries as men for work being performed. Refer to [Standard Specifications §107-16](#) and [LPM Chapter 15](#) for more information.

This reporting requirement applies to every individual who is paid in conjunction with the contract.

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. In addition, the Sponsor is responsible for quality control monitoring of prompt payments using EBO, with the RLPL providing quality assurance monitoring and enforcement.

While [49 CFR 26.29](#) requires payment to subcontractors within thirty (30) days, New York State and General Municipal Laws are more stringent. Specifically, [NYS Finance Law Article 9, Section 139-f\(2\)](#), and [NYS General Municipal Law, Article 5-A, Section 106-b\(2\)](#) 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. Refer to [Standard Specifications 109-07](#) and [LPM Chapter 15](#) for more information.

The Sponsor may withhold future payment to the Contractor, per their Contract, until prompt payment issues are resolved by the Contractor.

13.10 FEDERAL REPORTING REQUIREMENTS

Consultants and contractors must submit data to Sponsors using NYSDOT's Civil Rights reporting software, EBO. Sponsors are required to ensure that consultants and contractors submit timely, accurate, and complete data. It enables NYSDOT to submit to the FHWA timely, accurate, and complete federal reports that include all federally aided contracts in New York State. A Sponsor's failure to ensure timely, accurate, and complete reporting of Civil Rights data may result in a loss or delay of federal aid. All data must be entered before final project acceptance by the Sponsor.

13.11 CONTRACT COMPLIANCE REVIEWS

Sponsors must conduct Civil Rights monitoring on all construction contracts. In addition, the Sponsor may be directed to perform a comprehensive construction contract compliance review per [23 CFR 230 Subpart D](#). The procedure and forms for the construction contract compliance review process are in [NYSDOT's MURK Part 1A CAM Section 98](#).

NYSDOT's ODO annually completes a compliance review of Sponsors who were recipients of federal aid. The ODO analysts will contact the Sponsor via telephone and follow up with a letter. In addition, the appropriate RLPL will be provided with additional information on the review. Compliance Reviews not only cover a specific project but evaluate the Sponsor's internal compliance processes and procedures.

13.12 FINAL REPORTS—CONTRACT CLOSE-OUT

Sponsors must ensure that all required Civil Rights data for federally funded and state-funded projects are in EBO before the State-Local Agreement's close-out. Failure to provide timely, accurate, and complete data may jeopardize reimbursement and future aid.

13.13 CIVIL RIGHTS REQUIREMENTS ON STATE-FUNDED (NON-FEDERAL AID) PROJECTS

13.13.1 Minority and Women-Owned Business Enterprises (M/WBE) Program and Service-Disabled Veteran-Owned Business (SDVOB) Program

The requirements of [New York State Executive Law Article 15-A, Article 3 of the Veteran Services Law](#), and the regulations promulgated under [5 NYCRR 140-145](#) and [9 NYCRR 252.2](#) apply to all state-funded projects. Sponsors shall comply with these laws, rules, regulations, gubernatorial executive orders, and the [M/WBE](#) and [SDVOB Program](#) requirements.

All contracts entered into by the Sponsor in furtherance of state-issued, non-federally aided funds must be assessed to determine appropriate M/WBE/SDVOB goals derived from NYSDOT's Agency M/WBE and SDVOB Goal Plans. For detailed information on goal setting, Goal

Assessment, Good Faith Effort Documentation, and Goal Waiver Requests for M/WBE see [Appendix 13-5](#); for SDVOB, see [Appendix 13-6](#); and for GFE, see [Appendix 13-7](#).

13.14 NON-COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

By signing the State-Local Agreement, the Sponsor becomes contractually obligated to ensure all federal and state Civil Rights laws, rules, regulations, and federal and state executive orders are adhered to in contracts with its consultants and contractors. Failure by the Sponsor to carry out its responsibilities under and comply with federal and state civil rights requirements may result in a loss of federal or state aid.

13.15 REFERENCES, CHAPTER 13.0 CIVIL RIGHTS REQUIREMENTS

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
23 USC § 140(a) , Nondiscrimination	https://www.govinfo.gov/content/pkg/USCODE-1995-title23/html/USCODE-1995-title23-chap1-sec140.htm
42 USC § 2000d , Title VI of the Civil Rights Act	https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf
23 CFR § 200.9 , State Highway Agency Responsibilities	https://www.govinfo.gov/content/pkg/CFR-2008-title23-vol1/xml/CFR-2008-title23-vol1-sec200-9.xml
23 CFR § 230 , External Federal Highway Programs	https://www.govinfo.gov/content/pkg/CFR-1999-title23-vol1/xml/CFR-1999-title23-vol1-part230.xml
23 CFR § 230.111 , Implementation of Special Requirements for the Provision of On-the-Job Training	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec230-111.xml
23 CFR § 450 , Planning Assistance and Standards	https://www.govinfo.gov/content/pkg/CFR-2004-title23-vol1/xml/CFR-2004-title23-vol1-part450.xml
28 CFR § 35.105 , Self-evaluation	https://www.govinfo.gov/content/pkg/CFR-2011-title28-vol1/xml/CFR-2011-title28-vol1-sec35-105.xml
28 CFR § 35.150(d)(1) , Transition Plan	https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-150.xml
28 CFR § 35.151 , New Construction & Alterations	https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-151.xml
49 CFR § 26 , Disadvantaged Business Enterprises (DBE)	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml
49 CFR § 26.29 , What prompt payment mechanisms must recipients have?	https://www.govinfo.gov/content/pkg/CFR-1999-title49-vol1/xml/CFR-1999-title49-vol1-sec26-29.xml
49 CFR § 26.45 , How do recipients set overall goals?	https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/xml/CFR-2009-title49-vol1-sec26-45.xml
49 CFR § 27.7 , Discrimination Prohibited	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-sec27-7.xml
49 CFR § 27.11 , Remedial and Voluntary Actions and Compliance Planning	https://www.govinfo.gov/content/pkg/CFR-1998-title49-vol1/xml/CFR-1998-title49-vol1-sec27-11.xml

TITLE	LINK
Title VI of the Civil Rights Act of 1964	https://www.fhwa.dot.gov/civilrights/programs/title_vi
FEDERAL LAWS & REGULATIONS	
The Federal Aid Highway Act of 1968	https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg815.pdf
Section 504 of the 1973 Rehabilitation Act	https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973
Americans with Disabilities Act of 1990 (ADA)	https://www.ada.gov/ada_intro.htm
Presidential Executive Order (EO) 12898	https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice
Presidential Executive Order (EO) 13166	https://www.justice.gov/crt/executive-order-13166
STATE LAWS & REGULATIONS	
5 NYCRR 140-145, M/WBE Program	https://esd.ny.gov/sites/default/files/MWBERegulations-120220.pdf
9 NYCRR 252.2, SDVOB Program	https://govt.westlaw.com/nycrr/Document/le8529745221211e4a6bf0000845b8d3e?listSource=Search&contextData=%28sc.Search%29&list=NYREGULATION_PUBLICVIEW&rank=5&transitionType=Default
Veteran services Law Article 3, SDVOB	https://law.justia.com/codes/new-york/2022/vet/article-3/
NYS Executive Law Article 17-B, SDVOB Program	https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004FykREAS
NYS Executive Order 162, Ensuring Pay Equity	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_162.pdf
NYS Highway Law, Article 3, § 46, State Highways in Villages	https://www.nysenate.gov/legislation/laws/HAY/46
NYS Highway Law, Article 3 § 140, State Highways in Towns	https://codes.findlaw.com/ny/highway-law/hay-sect-140.html
NYS Highway Law, Article 12-B, § 349-C, State Highways in Cities	https://www.nysenate.gov/legislation/laws/HAY/349-C
NYS Finance Law, Article 9, § 139-f(2), Payment on Public Work Projects	Legislation NY State Senate (nysenate.gov)

TITLE	LINK
NYS General Municipal Law, Article 5-A, Section 106-b, Payment on Public Works Projects	https://www.nysenate.gov/legislation/laws/GMU/106-B
NYSDOT POLICIES, PROCEDURES, & GUIDANCE	
ADA Transition Plan	https://www.dot.ny.gov/programs/adamanagement/ada-transition-plan
DBE Certification Program	https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification
NYSDOT Contract Administration Manual, Section 98	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a
NYSDOT Standard Specifications	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc/usc-repository/2022_1_specs_usc_vol1.pdf
NYSDOT Highway Design Manual, Chapter 21	https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21
NYSDOT DBE Plan	https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/DBE%20Program%20Plan%202019%20Final%20%20121719.pdf
NYSDOT's M/WBE Plan	https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program
NYSDOT's SDVOB Plan	https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program
NYSDOT Title VI Plan	https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej
NYSDOT Engineering Instruction, EI 21-014	https://www.dot.ny.gov/portal/pls/portal/mexis_app.pa_ei_eb_admin_app.show_pdf?id=13988
Title VI Nondiscrimination Plan	https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej
ADDITIONAL RESOURCES	
DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental	https://www.ada.gov/doj-fhwa-ta-supplement-2015.html
The NYSUCP DBE Directory	https://nysucp.newnycontracts.com/

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New York State
Department of Transportation
Local Projects Manual

Chapter 13
Civil Rights Requirements
APPENDICES



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APPENDIX 13-1

TITLE VI PLAN

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

NOTE

Note: Wherever the terms "Name of Municipality," "Municipality name," "Municipality's," and "Municipality" occur throughout this document, it refers to the Sponsor indicated on this Cover Page.

Appendix 13-1: Standard Title VI/Non-Discrimination Assurances

The **Municipality** (herein referred to as the "Municipality"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the US Department of Transportation (DOT), through the **New York State Department of Transportation (NYSDOT)**, is subject to and will comply with the following:

Statutory/Regulatory Authorities

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, or national origin).

- 49 CFR Part 21 (entitled Nondiscrimination In Federally Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act Of 1964.)
- 28 CFR Section 50.3 (US Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policies, memoranda, and/or guidance, the Municipality hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the NYSDOT."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general assurances, the Municipality agrees with and gives the following Assurances with respect to its Federally assisted (Name of Appropriate Program):

1. The Municipality agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Municipality will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all (**Insert Name of Appropriate Program**) and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The **Municipality**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Municipality will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Municipality will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Municipality.
5. The Municipality receives Federal financial assistance to construct a facility or part of a facility; the assurance will extend to the entire facility and facilities operated in connection therewith.
6. Where the Municipality receives Federal financial assistance in the form of the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
7. The Municipality will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Municipality with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and,

- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. This Assurance obligates the Municipality for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the Municipality or any transferee for the longer of the following periods:
 - a. The period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits; or
 - b. The period during which the Municipality retains ownership or possession of the property.
9. The Municipality will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Municipality agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the **Municipality** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the NYSDOT's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews and/or complaint investigations conducted by NYSDOT. You must keep records, and reports and submit the material for review upon request to NYSDOT or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements prescribed by law or detailed in program guidance.

The **Municipality** gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the US Department of Transportation under the **(Insert Name of Appropriate Program)**. This ASSURANCE is binding on the **Municipality**, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, and their subcontractors, transferees, successors in interest, and any other participants in the **(Insert Name of Appropriate Program)**. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Municipality.

(Name of Municipality)

(Print Name)

by _____

(Signature of Responsible Local Official or designee)

DATED _____

Appendix 13-1: Title VI Nondiscrimination Policy Statement

It is the **Municipality's** (herein referred to as the "Municipality"), policy to prevent and eliminate discrimination in all its operations and services as well as all aspects of employment. All Departments, Divisions, Offices, and Bureaus will plan, develop, and implement their programs and activities so that no person is subjected to unlawful discrimination based on race, color, or national origin.

This policy fully incorporates throughout all of **the Municipality's** operations the requirements of applicable State and Federal laws, and executive orders to prohibit discriminatory practices, procedures, and policies. All administrators, managers, supervisors, and employees are directed to comply with these laws and orders.

The **Municipality** is committed to maintaining an agency that recognizes and values every person's inherent worth and dignity; fosters tolerance, sensitivity, understanding, and mutual respect among its members; and encourages each individual to strive to reach their own potential.

This policy will be placed on all of the **Municipality's** bulletin boards and made available to all organizations and entities doing business with the **Municipality**. Any complaints involving allegations of discrimination should be sent to **Municipal Title VI Coordinator Name**, including contact information.

Related Policy and Authoritative Sources

New York State Laws

- **New York State Human Rights Law Article 15 (1945)** – Guarantees Nondiscrimination in the State of New York on the basis of race, creed, color, national origin, sex, marital status, age, disability, and or sexual orientation.
- **New York State Law Article 15-A (1988)** - An act to amend the executive law and the state finance law in relation to participation by minority group members and women with respect to state contracts.
- **New York State Law Article 17-B (2014)** – An Act to amend the executive law to expand opportunities for service-disabled veteran-owned business enterprises.
- **Sexual Orientation Non-Discrimination Act (2003)** – This Act amends the Executive Law to include sexual orientation.

New York State Executive Orders

- **Executive Order 2** – authorized the continuation of certain prior Executive Orders related to equal opportunity and Nondiscrimination in all State programs.
- **Executive Order No. 6** – Insures equal employment opportunities for minorities, women, disabled persons, and Vietnam-era Veterans in State government. The order clarifies and expands the President of the Civil Service Commission's power and the Governor's

Executive Committee for Affirmative Action to ensure that agencies develop and implement effective affirmative action plans.

- **Executive Order 162** – assures that State laws are being complied with by requiring contractors and consultants to provide documentation demonstrating whether women are being paid the same salaries as men for work being performed.

Federal Laws and Executive Orders

- **Civil Rights Act of 1964** – Prevents discrimination in federally assisted programs; provides relief against discrimination in public accommodations; protects constitutional rights in public facilities and public education; enforces the constitutional right to vote. Title VI – prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. Title VII, as amended by the Equal Employment Opportunity Act of 1972 – Makes it unlawful to discriminate in employment practices on the basis of race, color, religion, sex, or national origin.
- **Section 503 of the Rehabilitation Act of 1973** – Prohibits discrimination on the basis of physical or mental disability in every federally assisted program or activity in the country.
- **Age Discrimination Act of 1975** – Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- **Civil Rights Restoration Act of 1988** – Specifies that recipients of federal funds must comply with civil rights laws in all areas, not just in a program or activity that receives federal funding. It applies to all federal laws.
- **Americans with Disabilities Act (ADA) of 1990** – Federal Law prohibiting discrimination against people with disabilities in employment, public access to services, transportation, public accommodations, and telecommunications services.
- **Civil Rights Act of 1991** – Provides appropriate remedies for intentional discrimination and unlawful harassment in the workplace; codifies the concepts of "business necessity" and "job-related," confirms statutory authority, and provides statutory guidelines for the adjudication of disparate impact suits under Title VII of the Civil Rights Act of 1964; expands the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination. The Act provides compensatory and punitive damages and jury trials in sex, religion, and disability bias cases.
- **Executive Order No. 162** – Ensures fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- **Executive Order No. 11246** – Prohibits contractors and sub-contractors doing business with the Federal Government from discriminating in employment because of race, color, religion, or national origin. Employers are required to take affirmative action in employment activities, including hiring, promotion, transfers, training, and minorities and women.

- **Executive Order No. 12898** - Seek to avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations, and to ensure full and fair participation by all potentially affected communities in the transportation decision-making process. Further, it directs recipients of federal funds 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.
- **Executive Order No. 11375** - Prohibits contractors and sub-contractors doing business with the Federal Government from discriminating in employment because of sex. Employers are required to take affirmative action in employment activities, including hiring, promotion, transfers, training, and minorities and women.
- **Executive Order No. 13166** - Prohibits discrimination based on national origin federal agencies, recipients and subrecipients of federal financial assistance.

(Print Name)

(Responsible Local Official or designee)

(Date)

Appendix 13-1: APPENDIX A, For Contractors, Subcontractors, Suppliers, and Manufacturers

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

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

Appendix 13-1: APPENDIX B, Clauses for Deeds Transferring United Property

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the US Department of Transportation as authorized by law and upon the condition that the **Municipality** will accept title to the lands and maintain the project constructed thereon in accordance with **(Insert Name of Appropriate Legislative Authority)**, the Regulations for the Administration of **(Insert Name of Appropriate Program)**, and the policies and procedures prescribed by the **(Insert Title of Modal Operating Administration)** of the US Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the US Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Municipality** all the right, title and interest of the US Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the **Municipality** and its successors forever, subject, however, to the covenants, conditions, restrictions, and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Municipality**, its successors and assigns.

The **Municipality**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed, and (2) that the **Municipality** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in federally-assisted programs of the US Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the US Department of Transportation and its assigns as such interest existed prior to this instruction].*

*(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to clarify the purpose of Title VI.)*

Appendix 13-1: APPENDIX C, Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Municipality** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event, facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a US Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of a breach of any of the above Nondiscrimination covenants, *the Municipality* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of a breach of any of the above Nondiscrimination covenants, the **Municipality** will have the right to enter or re-enter the lands and facilities thereon. The above-described lands and facilities will thereupon revert to and vest in and become the absolute property of the **(Insert Title of Recipient)** and its assigns. *

*(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to clarify the purpose of Title VI.)*

Appendix 13-1: APPENDIX D, Clauses in the Event of a Breach of Any of the Above Nondiscrimination Covenants

CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **Municipality** pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of a breach of any of the above Nondiscrimination covenants, (**Municipality**) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued*.
- C. With respect to deeds, in the event of a breach of any of the above Non-discrimination covenants, (**Municipality**) will thereupon revert to and vest in and become the absolute property of (**Municipality**) and its assigns*.

*(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to clarify the purpose of Title VI.)*

Appendix 13-1: APPENDIX E, Nondiscrimination Authorities

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

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, or national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects),
- Federal-Aid Highway Act of 1973, (23 USC § 324 *et seq.*), (prohibits discrimination on the basis of sex),
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27,
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age),
- Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex),
- The Civil Rights Restoration Act of 1987 (PL 100-259) (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not),
- Titles II and III of the Americans with Disabilities Act, prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38.
- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, creed, color, national origin, and sex),
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations,
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, provides that national origin discrimination includes discrimination based on an individual's limited English

proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100),

- AS AMENDED, Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs or activities (20 USC 1681 et seq).

Appendix 13-1: Limited English Proficiency (LEP) Plan

NAME OF MUNICIPALITY

Optional: Attach Organization Seal or Logo Here

(Print Name)

Signed by: _____

(Select Official)

Date:

E-Mail Address:

Telephone Number:

Limited English Proficiency (LEP)

This Limited English Proficiency Plan has been prepared to address the **(Insert Name of Municipality)** (herein referred to as the "Municipality"), and its' responsibilities as a subrecipient of federal financial assistance related to the needs of individuals with limited English proficiency. The Plan has been prepared according to Title VI of the Civil Rights Act of 1964, 42 USC 2000d, et seq., and its implementing regulations, which state that no person shall be subjected to discrimination based on race, color, or national origin.

Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency*, states that differing treatment based upon a person's inability to speak, read, write, or understand English is a type of national origin discrimination covered under Title VI. It directs each federal agency (e.g., FHWA) to publish guidance for its respective recipients (e.g., NYSDOT), clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies that receive federal funds and extends to its sub-recipients.

Plan Summary

The **Municipality** has developed this *Limited English Proficiency Plan* to help identify reasonable steps for providing language assistance to persons with limited English proficiency (LEP) who wish to access services provided by the Municipality. As defined by Executive Order 13166, LEP persons do not speak English as their primary language and have limited ability to read, speak, write, or understand English. This plan outlines how to identify a person who may need language assistance, how assistance may be provided, staff training required, and notification to LEP persons regarding assistance availability. For detailed guidance regarding LEP, see [NYSDOT's LEP Plan](#).

In order to prepare this plan, the **Municipality** used the Federal Highway Administration (FHWA) Four-Factor LEP analysis:

1. The number or proportion of LEP persons in the service area whom the the **Municipality** may serve.
2. The frequency with which LEP persons come in contact with the **Municipality** services.
3. The nature and importance of services provided by the **Municipality** to the LEP population.
4. The interpretation services available to the **Municipality** and overall cost to provide LEP assistance. A summary of the results of the four-factor analysis is found in the following section.

Meaningful Access: Four-Factor Analysis

1. The number or proportion of LEP persons in the service area who may be served or are likely to require *Municipality* services

The *Municipality* staff reviewed the American Community Survey 5-Year Estimates for New York State and determined that:

- a. _____ individuals in *Municipality* service area comprising _____% of the population] speak a language other than English,
- b. Of those, _____ individuals have limited English proficiency; that is, they speak English less than "very well" or "not at all." It is only _____% of the overall population in the service area,
- c. In the (Insert Name of Municipality)service area, of those persons with limited English proficiency:
 - _____% speak German
 - _____% speak Spanish
 - _____% speak African languages
 - _____% speak Chinese
 - _____% speak Serbo-Croatian
 - _____% speak Scandinavian
 - _____% speak Japanese
 - _____% speak Russian
 - _____% speak other Indic languages
 - _____% speak Vietnamese
 - _____% speak French
 - _____% speak Tagalog
 - _____% speak other Slavic languages
 - _____% speak Arabic, Indo-European languages
 - _____% speak Native North American Languages

- _____ % speak Korean
- _____ % speak Haitian Creole
- _____ % speak Italian
- _____ % speak Bengali
- _____ % speak Polish
- _____ % speak Yiddish
- _____ % speak all other languages

2. The frequency with which LEP persons come in contact with the *Municipality* services

The *Municipality* reviewed the frequency with which their staff has, or potentially has, contact with LEP persons. It includes documenting phone inquiries or office visits.

- a. To date, the *Municipality* has had _____ requests for interpreters and _____ requests for translated program documents as follows: (Provide details here)
OR
- b. The *Municipality* and other staff have had minimal contact with LEP persons.

3. The nature and importance of services provided by the *Municipality* to the LEP population

- a. There is no large geographic concentration of any LEP individuals in the service area of *Municipality*. The overwhelming majority of the population, _____%, speaks only English. As a result, few social, service, or professional and leadership organizations within the *Municipality* service area focus on outreach to LEP individuals.
- b. The *Municipality* (Insert Department Name) staff is most likely to encounter LEP individuals through office visits, phone conversations, notifications from department staff regarding the results of service delivery, and attendance and participation at public meetings.

4. The resources available to the *Municipality* and overall cost to provide LEP assistance

The *Municipality* reviewed its available resources that could be used to provide LEP assistance and inventoried its documents to determine which are suitable for

translation if the need arises.

The **Municipality** contacted local citizens and organizations willing to provide voluntary language translation and interpretation services if needed within a reasonable time period. Other language translation options could be provided by bilingual staff or by telephone from a professional interpretation service for which the **Municipality** would pay a fee.

LANGUAGE ASSISTANCE

A person who does not speak English as their primary language and has a limited ability to read, write, speak, or understand English may be a Limited English Proficient person and may be eligible for language assistance with respect to **Municipality** services. Language assistance can include interpretation (that means oral or spoken transfer of a message from one language into another) and translation (the written transfer of a message from one language into another).

The **Municipality's** staff can identify an LEP person in need of language assistance by:

- Posting notices of the LEP Plan and the availability of interpretation or translation services free of charge in languages LEP persons would understand.
- Providing **Municipality** staff with language identification cards to identify the language interpretation services needed if the occasion arises.
- Periodically surveying **Municipality**, staff regarding their interaction with LEP persons during the previous period (e.g., quarterly, semi-annually, and annually).
- Greeting participants at the **Municipality**-sponsored informational meeting or event. Conversational interaction with participants can help determine LEP needs for future events.

Language Assistance Measures

Although there is a very low percentage of LEP individuals in the **Municipality** service area (i.e., persons who speak English less than "very well" or "not at all,") the **Municipality** will take the following actions:

1. The **Municipality** staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating in English.
2. The following resources will be available to accommodate LEP persons:
 - Volunteer Spanish language interpreters will be provided within a reasonable time.
 - Language interpretation services for all other languages will be accessed through a professional telephone interpretation service.

STAFF TRAINING

The information below will be disseminated to staff. Training opportunities on these topics also will be provided:

- Title VI Policy and LEP responsibilities
- Description of language assistance services offered to the public
- Proper use of interpreter service provider's language identification cards
- Documentation of language assistance requests
- Handling of Title VI/LEP complaints

All contractors or subcontractors performing work for the **Municipality** must follow the Title VI/LEP guidelines.

TRANSLATION OF DOCUMENTS

The **Municipality** weighed the cost and benefits of translating documents for potential LEP groups. Considering the expense of translating documents, the likelihood of frequent changes in documents, and other relevant factors, the **Municipality** has determined that it is an unreasonable burden to translate documents at this time.

Due to the very small LEP population, the **Municipality** does not have a formal outreach procedure. _____ [Enter year here]. Translation resources have been identified and are limited in this region. However, if the need arises to conduct outreach to LEP individuals, the **Municipality** will consider the following options:

- When staff prepares documents or schedules public meetings whose audience is expected to include LEP individuals, the **Municipality** will provide meeting notices, flyers, and agendas in the appropriate non-English language(s).
- **Municipality** will assess requests to translate documents based on the potential effect and known LEP population.

MONITORING

Monitoring and Updating the LEP Plan – The **Municipality** will update the LEP Plan as required. The plan will be reviewed and updated at a minimum when recent data from the US Census and the American Community Survey are available or when higher concentrations of LEP individuals are present in the **Municipality** service area. Updates to the LEP Plan will include the following:

- The number of documented LEP contacts encountered annually.
- How the needs of LEP persons have been addressed?
- Determination of the current LEP population in the service area (census data, surveys, information from community-based organizations, and other sources).
- Determination as to whether the need for translation services has changed.
- Determination of the effectiveness of language assistance efforts.
- Determination of the adequacy of the **Municipality's** financial resources to fund language assistance resources.

- Determination of the **Municipality's** full compliance with the goals of the LEP Plan.
- Determination of the **Municipality** processing of LEP complaints.

DISSEMINATION OF THE (Insert Name of Municipality) LEP PLAN

Choose from below the actions that **Municipality** will take:

- Post signs in **Municipality** public areas informing LEP persons of the LEP Plan and how to access language services.
- Notify LEP persons of the availability upon request of documents in other languages. This should be placed on agendas and public notices and in the language that LEP persons would understand.
- On the **Municipality** website, post the LEP Plan and procedure to access language services.
- Prepare and post Press Release in non-English languages as necessary.
- Distribute copies of press releases to advocacy groups and other organizations serving LEP populations.

APPENDIX 13-2

ADA TRANSITION PLAN CHECKLIST

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

Appendix 13-2: ADA Transition Plan Checklist

<p>Sponsor:</p> <p>_____</p> <p>Responsible Local Official (RLO):</p> <p>_____</p> <p>Title of RLO:</p> <p>_____</p> <p>Telephone</p> <p>_____</p> <p>Email Address:</p> <p>_____</p> <p>Date:</p> <p>__ / __ / _____</p> <p><input type="checkbox"/> Federal Aid Project <input type="checkbox"/> Non-Federal Aid Project</p>	<p>ADA Coordinator:</p> <p>_____</p> <p>Title II Coordinator</p> <p>_____</p> <p>Section 504 Coordinator:</p> <p>_____</p> <p>Self-Evaluation Plan Manager:</p> <p>_____</p> <p>ADA Transition Plan Manager:</p> <p>_____</p>
--	---

Sponsors Responsibilities

This section aims to determine the range of types of facilities/assets the Sponsor is responsible for.

<input type="checkbox"/> Highways	<input type="checkbox"/> Bus Transit Systems	<input type="checkbox"/> Airports
<input type="checkbox"/> Rest Areas	<input type="checkbox"/> Bus Stops	<input type="checkbox"/> Ports and Harbors
<input type="checkbox"/> Welcome Areas	<input type="checkbox"/> Van Transit Systems	<input type="checkbox"/> Pipelines
<input type="checkbox"/> Scenic Overlooks	<input type="checkbox"/> Rail Transit Systems	<input type="checkbox"/> Waterways
<input type="checkbox"/> Recreation Areas	<input type="checkbox"/> Public Safety Facilities	<input type="checkbox"/> Others
<input type="checkbox"/> Office Building	<input type="checkbox"/> Railways	
<input type="checkbox"/> Maintenance Facilities	<input type="checkbox"/> Ferries	

Identification of Deficiencies

This section aims to discuss what facilities the Sponsor is typically dealing with and some common deficiencies.

What Type of Facilities are you dealing with?					
<input type="checkbox"/>	Sidewalks	<input type="checkbox"/>	Crosswalks	<input type="checkbox"/>	Shared Use Paths
<input type="checkbox"/>	Curb Ramps	<input type="checkbox"/>	Ramps	<input type="checkbox"/>	Other
<input type="checkbox"/>	Curb Cuts	<input type="checkbox"/>	Medians		
<input type="checkbox"/>	Driveway Crossings	<input type="checkbox"/>	Bus Stops		
Clear Width and Other Dimensions: <input type="checkbox"/> Narrow <input type="checkbox"/> Below Guidelines			Grade: <input type="checkbox"/> Steepness <input type="checkbox"/> Angle Points		
Cross Slope: <input type="checkbox"/> Steepness <input type="checkbox"/> Irregularity <input type="checkbox"/> Variability			Materials and Finishes: <input type="checkbox"/> Deterioration <input type="checkbox"/> Inappropriateness		
Discontinuities: <input type="checkbox"/> Missing Sections <input type="checkbox"/> Gaps <input type="checkbox"/> Drops			Lighting: <input type="checkbox"/> Missing <input type="checkbox"/> Not Operating <input type="checkbox"/> Inadequate Levels		
Obstructions: <input type="checkbox"/> Signs <input type="checkbox"/> Fire Hydrants <input type="checkbox"/> Lights <input type="checkbox"/> Newspaper Boxes <input type="checkbox"/> Standing Water <input type="checkbox"/> Drainage Structure <input type="checkbox"/> Mailboxes			Detectable Warning Systems: <input type="checkbox"/> Missing <input type="checkbox"/> Inappropriate Materials <input type="checkbox"/> Inadequate Size <input type="checkbox"/> Wrong Location		
Traffic Signal Systems: <input type="checkbox"/> Inadequate Time Allowed <input type="checkbox"/> Inaccessible Buttons <input type="checkbox"/> Inoperable Buttons <input type="checkbox"/> Lack of Visually Impaired Provisions			Maintenance and Services: <input type="checkbox"/> Snow Removal <input type="checkbox"/> Debris Clean Up <input type="checkbox"/> Trash Cans <input type="checkbox"/> Recyclable Material Bins		
Access Through Work Zones			Other		

Designs and Cost Estimates for Improvement

The improvements needed to correct deficiencies must be defined through a design and cost estimating process. The goal of this section is to discuss the Sponsor's approach to doing this.

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Have your design standards been reviewed concerning accessibility issues?
<input type="checkbox"/>	<input type="checkbox"/>	Do you have in-house design capacity concerning accessibility issues?
<input type="checkbox"/>	<input type="checkbox"/>	Are design consultants needed?
What cost estimating resources do you rely on for accessibility improvements?		
What escalation factors are you applying to accessibility improvements?		

Prioritization of Improvements

A priority ranking for approaching the defined improvements must be worked out to establish an effective schedule. This section aims to discuss the methods used to rank the upgrades in order of priority.

What is the approach to prioritizing improvements?			
<input type="checkbox"/>	Population density in the area	<input type="checkbox"/>	Hospitals
<input type="checkbox"/>	Significant disabled population within the area	<input type="checkbox"/>	Places of Employment
<input type="checkbox"/>	Proximity to key locations	<input type="checkbox"/>	Shopping Areas
<input type="checkbox"/>	Government offices	<input type="checkbox"/>	The severity of the deficiency
<input type="checkbox"/>	Schools		
Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Is a review complaint a factor?	
<input type="checkbox"/>	<input type="checkbox"/>	Is public demand a factor?	

Prioritization of Improvements

What are the sources of public demand?		
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Is compatibility with the available budget a factor?
How are the available budget and the improvement needs matched?		

Management Approach to Implementation

This section explains how the Sponsor manages the transition plan's development and carries out the improvements. The plan's development may be a time-intensive effort but tracking the implementation of the upgrades will be a less severe long-time assignment.

What is the approach to prioritizing improvements?
Who is the Responsible (RLO) in charge of the implementation of the Transition Plan?
Who is the ADA Transition Coordinator?
Is there an internal committee that provides input into the Transition Plan Process?
Has any staff been assigned to the Transition Plan Process?
How many staff persons?
In what capacity?
In what Department does the responsibility for the Transition Plan reside?
What training courses about accessibility have the staff gone through?
What reference works about accessibility do you find useful?
Who has the responsibility for Transition Plan updates?
Have any consultants been contacted relative to Transition Plan work?

Funding Mechanisms

There is no specific funding mechanism related to the improvement of accessibility deficiencies. Funding might come from many different sources. The goal of this section is to explore the funding experience of the Sponsor.

Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Have accessibility improvements been incorporated into existing programmed projects?	
<input type="checkbox"/>	<input type="checkbox"/>	Has any cost differential been recognized?	
<input type="checkbox"/>	<input type="checkbox"/>	Have stand-alone accessibility improvement projects been processed through the Transportation Improvement Program?	
What sources have provided funding for accessibility improvement programs:			
<input type="checkbox"/>	National Highway System Program		<input type="checkbox"/>
<input type="checkbox"/>	Surface Transportation Program		<input type="checkbox"/>
<input type="checkbox"/>	Highway safety Improvements Program		<input type="checkbox"/>
<input type="checkbox"/>	Railway-Highway Crossing Program		<input type="checkbox"/>
<input type="checkbox"/>	Transportation Alternatives Program		<input type="checkbox"/>
<input type="checkbox"/>			<input type="checkbox"/>
<input type="checkbox"/>	Congestion Mitigation/Air Quality Program		<input type="checkbox"/>
<input type="checkbox"/>	Recreational Trails Program		<input type="checkbox"/>
<input type="checkbox"/>	State and Community Traffic Safety Program		<input type="checkbox"/>
<input type="checkbox"/>	Other Programs		<input type="checkbox"/>
Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Have accessibility improvements been included in developer impact fees?	

Scheduling and Budgeting

Schedules and budgets are the tools of implementation. This section aims to determine how the Sponsor will/is scheduling and budgeting for accessibility improvements.

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Is there an overall completion target date?
<input type="checkbox"/>	<input type="checkbox"/>	Are there milestone dates?
<input type="checkbox"/>	<input type="checkbox"/>	Is there a separate Curb Ramp Installation Schedule?
<input type="checkbox"/>	<input type="checkbox"/>	Is there a budget line item for accessibility improvement programs?

Coordination with Other Agencies

Other agencies have authority over pedestrian facilities and have an interest in inaccessibility. This section aims to explore the exchange of information and the handling of interfacing with other agencies.

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Are there local government pedestrian master plans that are used as input and guidance?
How is the interface between agency sidewalks and local sidewalks handled?		
Who has authority over bus stops?		
How is the interface between sidewalks and bus stops handled?		
What other Agencies, if any, have jurisdiction over pedestrian facilities?		
<input type="checkbox"/> Transit Authorities <input type="checkbox"/> Airport Authorities <input type="checkbox"/> Turnpike Authorities		
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Do you receive input from any social services agencies?

Promulgation and Feedback

Any recommendations, unique, unusual, or unfinished (e.g., ROW Projections, permits, funding shortfalls, etc.) to be noted in the "Notice to Proceed with Award" Letter:

Unique Situations

Regional Reviewer	Concern/Situation	Resolution/Date

APPENDIX 13-3

ADA TRANSITION PLAN

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

NOTE

Wherever the term "Municipality" and "Municipality's" occurs throughout this document, it refers to the named Municipal Sponsor indicated on this Cover Page.

Appendix 13-3: AMERICANS WITH DISABILITIES ACT (ADA) TRANSITION PLAN

ADA Transition Plan

This ADA Transition Plan reflects **Municipality** herein referred to as the (“Municipality”), long-term commitment to ADA compliance and details the stages of **Municipality** plan and the timeline for (1) evaluating accessibility by identifying any structural barriers associated with public facilities; (2) identifying accommodations and/or modifications that can be provided to make programs and services accessible, and (3) prioritizing the remediation of any deficiencies and formulating a budget and schedule for those improvements.

This Draft ADA Transition Plan will be revised and updated as the steps of the Plan are completed.

Introduction

ADA regulations prohibit discrimination against individuals on the basis of disability and require state and local governments to make their programs and services accessible to persons with disabilities. These requirements focus on providing accessibility by addressing and eliminating structural barriers associated with public facilities.

As detailed below, **Municipality** has made a significant and long-term commitment to improving the accessibility of its public facilities. The purpose of this Plan is to ensure that **Municipality** identifies prohibited structural barriers to its public facilities and, where structurally feasible, schedules and implements ADA-required improvements in order to remove those barriers.

The ADA requires that the Transition Plan include the following components:

1. Identification of physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities,
2. Identification of the methods to be used to remove any barriers limiting accessibility,
3. A schedule for completion of the necessary steps to achieve accessibility in public facilities, and
4. The Name of the public entity's ADA Coordinator.

STEP 1: IDENTIFICATION OF PHYSICAL BARRIERS IN THE NAME OF THE MUNICIPALITY'S FACILITIES

The first phase of the ADA Transition Plan is to evaluate the **Municipality's** public facilities for accessibility. Officials from Planning, Public Works, and Human Resources Departments will coordinate to conduct accessibility evaluations of the following facilities:

- Sidewalks, crosswalks, and curb ramps
- Publicly accessible buildings

- Parking lots serving publicly accessible buildings

A Survey of the **Municipality's** Public Facilities ("the Survey") will be completed for each facility evaluated. Any deficiencies suggested improvements and observations relating to structural feasibility of improvements will be noted and recorded on the Survey. An Inventory of Public Facilities ("the Inventory") will also be created and will serve as the central database for identified structural barriers, suggested improvements, and comments relating to structural feasibility of improvements.

Evaluation of Sidewalks, Crosswalks, and Curb Ramps

The Survey will contain the following ratings to assess the condition of each **Municipality** sidewalk, crosswalk, and curb ramp:

- **Rating 1** – Not Applicable: A facility not considered to require accessibility, for example, limited-access highways.
- **Rating 2** – Not Accessible: Significant discontinuity such as steps, no ramps, more than 100 feet of unpaved walkway, heaving, vertical displacement, other severe distress, flooding, etc.
- **Rating 3** – Partially Accessible: Not designed to current standards, problems with geometry of sidewalks, ramps, and landings, no detectable warnings, handrails, etc.
- **Rating 4** – Accessible: May need additional improvements, for example, circuitous routes, insufficient width, etc.
- **Rating 5** – Fully Accessible: Designed to current standards, but reasonable accommodations may still be required for individual cases.

Evaluation of Parking Lots and Publicly Accessible Buildings

To evaluate publicly accessible buildings and the parking lots serving those buildings, the Survey will incorporate relevant portions of the ADA Checklist (Appendix 13-2) for Existing Facilities (based on the [2010 ADA Standards for Accessible Design](#)), produced by the Institute for Human-Centered Design.

Schedule for Completion

Municipality officials from its Planning, Public Works, and Human Resources Departments will be coordinating over the next several months to evaluate public buildings, parking lots, sidewalks, crosswalks, and curb ramps. Numerous facilities will be subject to this evaluation, and consequently, this will be a substantial undertaking for the reviewing officials. The evaluations will be scheduled to evaluate outdoor facilities prior to the winter months (to avoid snow cover that may impede a thorough review), with any remaining evaluations of outdoor facilities to be completed to **provide a projected date for completion**. Evaluations of indoor facilities will continue during the winter months. Therefore, it is estimated that Step 1 will be completed by **provide estimated completion date**.

STEP 2: IDENTIFICATION OF METHODS TO REMOVE BARRIERS

The second phase of the **Municipality** ADA Transition Plan is to develop a method to remove barriers. This includes identifying the nature of needed improvements, determining the structural feasibility of improvements under the ADA standards, and prioritizing necessary improvements.

Once the necessary improvements have been identified and prioritized, this information, along with a list of any improvements determined to be physically unfeasible, will be presented at a public meeting of the **Municipality's** Compliance Committee. The **Municipality's** practice provides public notice of the dates and agendas of Compliance Committee meetings on the **Municipality's** website. It will provide the public with an opportunity to participate in the formulation of the ADA Transition Plan.

Nature of Improvements and Structural Feasibility

The necessary improvements will be determined during Step 1 – the accessibility evaluation of **the Municipality facilities** – and incorporated into the ADA Transition Plan after completing Step 1. Any improvements that **Name of Agency** officials determine are not structurally feasible based on ADA regulations will also be incorporated into the Plan.

Priority of Improvements

Sidewalks; Crosswalks; Curb Ramps

With respect to sidewalks, crosswalks, and curb ramps, this ADA Transition Plan's primary focus is to address all ADA noncompliant facilities, defined as locations with a rating of "2" and "3" on the scale discussed above.

The priority of improvements to these facilities will be as follows:

1. Those serving publicly accessible **Municipality** facilities,
2. Those serving commercial and employment centers, and
3. Those serving other areas.

Parking Lots and Publicly Accessible Buildings

The priority of improvements to parking lots and publicly accessible spaces in **Municipality** buildings will be based on the severity of the accessibility barrier and the frequency of public presence at the facility. Notably, the general assessment of the **Municipality** Code Enforcement Officer is that **Municipality** facilities where public meetings take place are in substantial compliance with the ADA. All new construction or renovations to existing facilities have complied with ADA standards. As such, the **Municipality** does not expect that its publicly accessible buildings and parking lots will require major structural improvements.

STEP 3: SCHEDULE FOR COMPLETION OF NECESSARY IMPROVEMENTS

Once the Inventory of Public Facilities has been completed and necessary improvements have been prioritized as provided above, the **Municipality** will formulate an estimated budget for the improvements. The schedule for improvements will depend heavily upon the number and severity of the deficiencies identified during the accessibility evaluation and the costs associated with the improvements. However, the **Municipality** reiterates its commitment to making its public facilities accessible to all persons, regardless of disability. The **Municipality's** ADA Transition Plan will outline a specific schedule for improvements after Completion of Step 2, and this schedule will reflect the **Municipality's** commitment to ADA compliance.

ADA COORDINATOR

The (**Name of Municipality**) ADA Coordinator is:

Name (*Name*) _____

Title (*Title*) _____

Provide ADA Coordinators' contact information:

Name: _____

ADA Coordinator _____

Name of Municipality _____

Address: _____

Telephone Number: _____

E-mail Address: _____

APPENDIX 13-4

ADA PROPOSED WORK PLAN AND SCHEDULE

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

NOTE

Wherever the term "Municipality" and "Municipality's" occurs throughout this document, it refers to the named Municipal Sponsor indicated on this Cover Page.

APPENDIX 13-5

SETTING M/WBE GOALS

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

Appendix 13-5: SETTING M/WBE GOALS ON NON-FEDERALLY AIDED GRANT CONTRACTS

The provisions of New York State Executive Law Article 15-A *Participation by Minority Group Members and Women with Respect to State Contracts* and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ([5 NYCRR Parts 140-145](#)) are applicable to all State grant contracts. The Municipality/Sponsor/Grantee shall comply with these laws, rules, regulations, executive orders, and the M/WBE Program requirements.

All contracts entered into by Municipalities/Sponsors/Grantees in furtherance of State-issued, non-federally-aided, grants must include M/WBE goals that are derived from the New York State Department of Transportation's (NYSDOT's) Agency M/WBE Goal Plan established pursuant to New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145.

This goal is applicable to Municipalities/Sponsors/Grantees when they enter into contracts, in furtherance of the NYSDOT grant, as follows:

- a. Construction contracts greater than one hundred thousand dollars (\$100,000); or
- b. Contracts greater than twenty-five thousand dollars (\$25,000) for design and construction-related professional services (Architectural/Engineering).
- c. Contracts greater than twenty-five thousand dollars (\$25,000) for procurement of materials (commodities).

If any part of the Municipality's/Sponsor's/Grantee's grant is effectuated with either the Municipality's/Sponsor's/Grantee's employed workforce or through a pre-existing qualification-based consultant contract, then the Municipality/Sponsor/Grantee shall not apply M/WBE goals **to that portion of the work**. The Municipality/Sponsor/Grantee is encouraged to maximize M/WBE participation to the greatest extent practicable.

Establish M/WBE Goals

The Municipality/Sponsor/Grantee agrees that the following Standard M/WBE Goals for projects entered into and funded, in whole or in part, with proceeds from a NYSDOT grant are provided.

Standard M/WBE Goals

CATEGORY/CONTRACT TYPE	MBE	WBE
Commodities	15.00%	15.00%
Construction/Consultants (Architectural/Engineering)	13.00%	13.00%
Construction	7.00%	11.00%
Services/Consultants (Non-Architectural/Engineering)	8.00%	18.00%

NOTE: See definitions

These Standard Goals are based on the NYSDOT’s Agency M/WBE Goal Plan, as a result of programmatic analysis. The Plan is available at the [M/WBE Program webpage](#) on the NYSDOT website.

The Municipality/Sponsor/Grantee agrees to consider the following statutory factors (See [5 NYCRR 142.2\(d\)](#)) and establish an appropriate contract goal in all related contracts executed by the Sponsor/Municipality/Grantee:

The Statutory Factors are:

1. The contract and subcontract scope(s) of work. (This may include a consideration of work items, quantity, contract terms, and materials, and whether the contract is a single operation or sole-source contract).
2. The potential subcontracting opportunities, available in the prime contract. (This may include a consideration of primary and secondary work operations).
3. The relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities. (See [Disparity Studies on the Empire State Development website](#)).
4. The number and types of certified minority and women-owned business enterprises found in the directory of certified minority and women-owned businesses available to perform the contract work. (The directory is accessible at the [New York State Contract System website](#).)
5. The geographic location of the contract performance.
6. The extent to which geography is material to the performance of the contract.
7. The ability and willingness of certified minority-owned and women-owned enterprises located outside of the geographic location of contract performance, notwithstanding

- the regional location of the certified enterprise, to perform on the contract.
8. The total dollar value of the work required by the contract in relation to the dollar value of the subcontracting opportunities.
 9. The relationship of the monetary size and term of the contract to the monetary size and term of the project for which the contract is awarded.

M/WBE Participation Evaluation Process

Pre-Advertisement

The Municipality/Sponsor/Grantee must analyze the statutory factors in relation to a contract's/consultant's work scope and circumstances. If the Municipality/Sponsor/Grantee determines a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee agrees to obtain NYSDOT approval by submitting: a **M/WBE Pre-Advertisement Goal Modification Request**, Good Faith Effort documentation, and the **M/WBE Goal Assessment Checklist** [obtained from the Office of Diversity and Opportunity] to NYSDOT's Regional Local Project Liaison (RLPL). The RLPL will review all supporting documentation to ensure that the GFE is sufficient.

If the RLPL determines:

- Supporting documentation is sufficient:
 - The RLPL will forward the M/WBE Pre-Advertisement Goal Modification Request, Good Faith Effort Documentation, and Goal Assessment Checklist to the Office of Diversity and Opportunity (ODO) for their review and approval.
- Supporting documentation is not sufficient:
 - The RLPL will notify the Sponsor in writing as to why the supporting documentation is insufficient.
 - The Sponsor will resubmit the documentation to the RLPL for review and submittal to ODO.

All requests for a M/WBE Pre-Advertisement Goal modification must be approved by NYSDOT prior to the advertisement of the contract.

Pre-Award

Once a qualified consultant or low bidder is identified, project entry in NYSDOT's standard civil rights reporting software **Equitable Business Opportunity Solutions** (EBO) is required. The following steps are to be completed before award of the contract:

1. The Municipality/Sponsor/Grantee must submit both construction and consultant "Contract Templates," utilizing the "SA MWBE EBO Construction Template" and the "SA MWBE EBO Consultant Template" to the RLPL or MOPM.

2. The RLPL or MOPM will perform a Quality Assurance review on the Contract Templates. If any errors are identified, the templates will be returned to the Municipality/Sponsor/Grantee for corrections and returned to the RLPL or MOPM. Completed templates will be submitted via email to: dot.sm.mo.localprograms.ebo@dot.ny.gov for upload.
3. Once the project information from the templates is uploaded into EBO, the RLPL or MOPM will be notified.
4. The RLPL or MOPM will then notify the Municipality/Sponsor/Grantee that the contract has been loaded into EBO.
5. The qualified consultant or the low bidder must enter their M/WBE utilization into EBO.
6. The Municipality/Sponsor/Grantee, RLPL, or MOPM must review this pre-award data to verify that the qualified consultant or the low bidder met the M/WBE goals.

If a qualified consultant or the low bidder:

- Provides commitments that meet or exceed the advertised goals, then the Municipality/Sponsor/Grantee may request the RLPL or the MOPM have the contract awarded in EBO.
- Does not provide commitments that meet or exceed the advertised goals, but can demonstrate adequate Good Faith Efforts (GFEs) to meet the goals:
 - The Municipality/Sponsor/Grantee must submit an [M/WBE Waiver Request](#) (See also: [NYSDOT Minority and Woman Owned Business Enterprises Program](#) website) along with all supporting justification, to the RLPL or MOPM to request a goal waiver.
 - The Municipality/Sponsor/Grantee must obtain NYSDOT approval of the M/WBE Waiver Request prior to awarding the contract.

If the Municipality/Sponsor/Grantee determines that the qualified consultant or the low bidder did not demonstrate adequate GFEs to meet the goals, the Municipality/Sponsor/Grantee should present its recommendation to award to the next qualified consultant or lowest bidder with analysis and supporting documentation to its management as well as to the RLPL or MOPM. Include the following with the recommendation:

- State the specific non-compliant actions,
- Cite the specification and regulation for each non-compliant action,
- Provide calculations of the amount achieved toward the M/WBE goal,
- Provide analysis of the feasibility of the M/WBE goals,
- Provide information on outreach to Low Bidder to meet the M/WBE goals,
- Information on the Second Bidder's goal demonstration; and
- Any other relevant information.

The Municipality/Sponsor/Grantee must follow their administrative processes as their

requirements state. If it is determined that the qualified consultant and the low bidder did not conduct adequate GFEs, with agreement from NYSDOT, the Municipality/Sponsor/Grantee may disqualify the qualified consultant and the low bidder and award to the second qualified consultant or low bidder who has successfully met the M/WBE goals or demonstrated adequate GFEs.

NYSDOT will provide the reviewed and completed M/WBE Waiver Request to the Municipality/Sponsor/Grantee. NYSDOT approval of the M/WBE Waiver Request must be received prior to the award of the contract.

Post Award

If a consultant/contractor fails to attain its M/WBE commitment on a contract, including differences based on quantity or performance requirement changes, the Municipality/Sponsor/Grantee must submit a **M/WBE Waiver Request** and a new **M/WBE Goal Assessment Checklist**, obtained from the Office of Diversity and Opportunity, to the RLPL. The request must provide supporting justification by documenting the goals, commitments, attainments, and post-award Good Faith Efforts to meet the commitments.

If the RLPL determines:

- That the post-award supporting documentation is sufficient:
 - the RLPL will forward all post-award supporting documents from the Sponsor to ODO for review and approval.
- That the post-award supporting document is not sufficient:
 - the RLPL will notify the Sponsor in writing as to why the post-award supporting documentation is insufficient.
 - The Sponsor will resubmit the documentation to the RLPL for review and submittal to ODO.

NYSDOT will notify the Municipality/Sponsor/Grantee at the conclusion of the Waiver Request review.

If a consultant/contractor fails to attain its M/WBE commitment, the Municipality/Sponsor/Grantee may suspend contract payments in accordance with the contract agreement with the consultant/contractor. The consultant/contractor may be directed to comply with the Municipality/Sponsor/Grantee lawful procedures upon due notice in writing to the consultant/contractor, including cancellation, termination, or suspension in whole or in part in accordance with the contract agreement between the consultant/contractor and the Municipality/Sponsor/Grantee.

When the Municipality/Sponsor/Grantee determines that the consultant/contractor is not in compliance with the requirements of the contract and the consultant/contractor refuses to comply with such requirements, or if the consultant/contractor is found to have willfully and intentionally failed to comply with the M/WBE participation goals, the consultant/contractor shall be obligated to pay to the Municipality/Sponsor/Grantee liquidated damages up to 20% of the portion of the consultant/contractor's contracts and/or subcontracts, funded in whole or in part by the Municipality/Sponsor/Grantee agreement, to which contract goals are established in accordance with NYSDOT guidance, in accordance with 5 NYCRR Parts 140-145. The State may also assess liquidated damages against the Municipality/Sponsor/Grantee.

The Municipality/Sponsor/Grantee shall not take any non-compliance actions until review and approval have been completed by NYSDOT and notification made to the Municipality/Sponsor/Grantee.

Good Faith Efforts (GFEs)

To assist the qualified consultant or low bidder in developing an appropriate justification for GFEs. See Good Faith Efforts Guidance at [Minority and Women-Owned Business Enterprises Program \(MWBE\)](#) (ny.gov)

Qualified consultant or low bidder's GFEs documentation shall include, but is not limited to:

1. Evidence of outreach to M/WBEs and M/WBEs' responses,
2. Copies of advertisements in appropriate general circulation, trade, and minority or women-oriented publications for participation by M/WBEs,
3. Dates of any meetings with M/WBEs; and
4. Documentation of actions taken to reasonably structure the Contract scope to maximize opportunities for M/WBE participation.

M/WBE Reporting

The Municipality/Sponsor/Grantee shall monitor all M/WBE utilization through EBO. Municipality/Sponsor/Grantee must ensure that the consultant/contractor enters all data into EBO before NYSDOT will distribute the final payment of the project to the Municipality/Sponsor/Grantee.

M/WBE Participation on Emergency Contracts

Contractors with Emergency contracts are encouraged to consider and include M/WBE firms to the extent appropriate and feasible. NYSDOT may require the contractor to submit a utilization plan and to comply with the post-award requirements of [5 NYCRR Part 140 -145](#) during the life of the contract. "Where and When" or "Standby" types of contracts are not necessarily emergency contracts as portions of the scope may be reasonably projected. Consult your RLPL or MOPM and the Office of Civil Rights prior to setting the M/WBE goals on such contracts.

Implementation Details

All non-federally-aided contracts entered into by Municipalities/Sponsors/Grantees of state grant funds must conform to this guidance.

For more information about the [Minority and Women-Owned Business Enterprise Program](#), go to the NYSDOT website.

This guidance does not apply to formula-based legislated aid to localities, including but not limited to, Consolidated Local Street and Highway Improvement Program (CHIPs) and Statewide Mass Transportation Operating Assistance (STOA) program.

Terms and Definitions

Architectural Engineering (A/E) - Private consulting persons or firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction inspection, and management services.

Commodities - A raw material that can be bought and sold. Examples of commodities include stone, culvert pipe, concrete, guiderail, etc.

Equal Employment Opportunity (EEO) – To ensure non-discrimination in employment on the basis of race, color, creed, or national origin. Contractors are required to submit workforce data to this end.

Good Faith Effort (GFE) - All necessary and reasonable activity and documentation by a consultant or contractor to demonstrate (show) steps taken to achieve M/WBE goal.

Grant Agreement – The agreement between the Sponsor/Municipality/Grantee and the State, which is necessary to obtain State aid reimbursement of eligible project costs. Also known as a State-Local Agreement (SLA).

Main Office Project Manager (MOPM) - NYSDOT Main Office contact for subrecipients advancing State or federally-funded transportation projects. The Main Office Project Manager is responsible for ensuring that locally administered transportation projects are administered in compliance with all federal, State, and local laws, rules, regulations, and executive orders.

Office of Diversity and Opportunity (ODO) – NYSDOT Main Office is responsible for ensuring compliance with federal and state civil rights laws, rules, regulations, and executive orders.

New York State Unified Certification Program (NYS UCP) - is responsible for only DBE certification in the state of New York and provides firms with "one-stop" shopping.

Non-Architectural/Engineering - Non-professional services which do not require a license from the NYS Education Department.

Non-Federally Aided Grant Contracts - locally-administered transportation projects that are typically funded in whole or in part with State funds and contain no federal program funds. Projects may be progressed by subrecipients/municipalities/grantees/sponsors. Projects may contain a local match as noted in each funding solicitation.

North American Industry Classification System (NAICS) - The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments to collect, analyze, and publish statistical data related to the U.S. business economy.

Recipient - An entity that receives funds in the form of a grant, cooperative agreement, or loan directly from the federal government. Typically, NYSDOT is referred to as a recipient, while a Sponsor is referred to as a sub-recipient.

Regional Local Project Liaison (RLPL) - Regional Office contact for Sponsors advancing federal and/or State aid transportation projects. The RLPL is responsible for ensuring that locally administered projects receive adequate supervision and inspection such that they comply with all federal, State, and local laws, rules, and regulations as well as federal and state executive orders.

Subrecipient - A county, city, town, village, railroad, airport, transit operator or other public agency, public authority, or nonprofit organization authorized and designated under its agreement with NYSDOT to design, acquire ROW, advertise, open bids, award, construct and administer contracts for state aid transportation projects. A subrecipient may also be referred to as the Municipality/Sponsor/Grantee.

Vendor – An interchangeable term used for a contractor/consultant who provides a service.

Instructions: This document is used to assess Minority/Women-Owned Enterprise (MWBE) project goals. Complete all yellow cells. Identify all work the Prime is to perform and the estimated value/cost of each major category. For both Sub-Contracting and Material Availability, break the project into major areas and identify tasks or items. Using the MWBE Contract Database (<https://ny.newyorkcontracts.com/>), perform the MWBE search and include the number of MBE and WBEs identified for each line. This document will then calculate the recommended goals for the project based on the number of each identified. Attach proof of your searches to this document.

Region:		Contract Number:	
Project Title:			
Prepared By:		Total Project Estimate:	\$0
E-Mail:		Estimated Prime to Perform	\$0
		Estimated Subcontracting	\$0
		Estimated Materials	\$0
		Balance	\$0

Balance Represents the remaining project value to be performed by either the Prime, Sub-Contractor or Material Contractor

Recommended Goals for Project	
MBE:	0%
WBE:	0%

Comments/Notes

Prime to Perform			
	Description of Work	Estimated Value	% of Project Estimate
1			
2			
3			
4			
5			
	Total	\$0	0%
	Overhead & Profit		0%
	Total Prime to Perform	\$0	0%

Sub-Contracting Availability				MBE Participation			WBE Participation				
	Description of Work	Estimated Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
1											
2											
3											
4											
5											
	Total	\$0	0%	\$0		-	0%		Total	-	0%

Materials Availability					MBE Participation			WBE Participation					
	Description	Estimated Value	% Discount based on Supplier/Broker Credit*	Discounted Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
1					0%								
2					0%								
3					0%								
4					0%								
5					0%								
6					0%								
7					0%								
8					0%								
	Total	\$0		\$0	0%	\$0		-	0%		Total	-	0%

* Discounts are as follows: Non Construction; Supplier 100%, Broker 25% Construction; Supplier 60%, Broker receives commission %

Attach All MWBE Search Results to this Checklist

APPENDIX 13-6

SETTING SDVOB GOALS

THE (MUNICIPALITY TYPE)
OF (NAME OF MUNICIPALITY) (**Sponsor**)

Appendix 13-6: SETTING SDVOB GOALS ON NON-FEDERAL AID GRANT CONTRACTS

The provisions of New York State Veteran Services Law Article 3 Participation by Service-Disabled Veteran-Owned Business with Respect to State Contracts and 9 NYCRR 252.2 are applicable to all State grant contracts. The Municipality/Sponsor/Grantee shall comply with these laws, rules, regulations executive orders, and the [SDVOB Program requirements](#).

All contracts entered into by Municipalities/Sponsors/Grantees in furtherance of State-issued, non-federal aid grants must include an SDVOB goal derived from the New York State Department of Transportation's (NYSDOT's) SDVOB Goal Plan established pursuant to New York State Veteran Services Law Article 3.

This goal is applicable to Municipalities/Sponsors/Grantees when they enter into contracts, in furtherance of the NYSDOT grant, as follows:

1. Construction contracts greater than one hundred thousand dollars (\$100,000); or
2. Contracts greater than twenty-five thousand dollars (\$25,000) for design and construction-related professional services (Architectural/Engineering); or
3. Contracts greater than twenty-five thousand dollars (\$25,000) for procurement of materials (commodities).

If any part of the Municipality's/Sponsor's/Grantee's grant is effectuated by either the Municipality's/Sponsor's/Grantee's employed workforce or through a pre-existing qualification-based consultant contract, then the Municipality/Sponsor/Grantee shall not apply SDVOB goals to that portion of the work. The Municipality/Sponsor/Grantee is encouraged to maximize SDVOB participation to the greatest extent practicable.

Establish SDVOB Goal

The Municipality/Sponsor/Grantee agrees that the statutory SDVOB Goal for projects entered into and funded, in whole or in part, with proceeds from a NYSDOT grant is six percent (6%).

As a result of programmatic analysis, the NYSDOT's SDVOB Goal Plan recommends an Agency goal that reflects consideration of the factors identified below. The Plan is available at [NYSDOT SDVOB FY2021 Goal Plan](#).

1. The contract and subcontract scope(s) of work, including consideration of work items, quantity, contract terms, materials, and whether the contract is a single operation or sole-source contract.
2. The potential subcontracting opportunities available in the prime contract include considering primary and secondary work operations.

3. The number and types of certified service-disabled veteran business enterprises found in the directory of certified service-disabled veteran-owned businesses available to perform the contract work. The directory is accessible at OGS's [Directory of New York State Certified Service-Disabled Veteran-Owned Businesses](#) website.
4. The geographic location of the contract performance.
5. The extent to which geography is material to the performance of the contract.
6. The ability and willingness of certified service-disabled veteran-owned business enterprises located outside of contract performance's geographic location, notwithstanding the certified enterprise's regional location, to perform on the contract.
7. The total dollar value of the work required by the contract in relation to the dollar value of the subcontracting opportunities.
8. The relationship of the monetary size and term of the contract to the monetary size and term of the project for which the contract is awarded.

SDVOB Participation Evaluation Process

Pre-Advertisement

The Municipality/Sponsor/Grantee must analyze the statutory factors in relation to a contract's/consultant's work scope and circumstances. If the Municipality/Sponsor/Grantee believes a goal modification is appropriate and supportable, the Municipality/Sponsor/Grantee must obtain approval from the Office of Diversity and Opportunity by submitting a [SDVOB Pre-Advertisement Goal Modification Request](#) with justification to NYSDOT's Regional Local Project Liaison (RLPL) or Main Office Project Manager (MOPM) prior to public advertisement of the contract. The ODO must approve all requests for an SDVOB Pre-Advertisement Goal modification of Civil Rights.

Pre-Award

Once a qualified consultant or low bidder is identified, project entry in NYSDOT's standard civil rights reporting software [Equitable Business Opportunity Solutions \(EBO\)](#) is required. The following steps are to be completed before award of the contract:

1. The Municipality/Sponsor/Grantee will submit "Contract Templates" to the RLPL or MOPM. There are two [contract templates](#) for construction projects, "State Aid EBO Construction Template" and the other for consultant contracts, "State Aid EBO Consultant Template."
2. The RLPL or MOPM will perform a Quality Assurance review on the Contract Templates. If any errors are identified, the templates will be returned to the Municipality/Sponsor/
3. Grantee for corrections and returned to the RLPL or MOPM. Completed templates will be submitted to the email: dot.sm.mo.localprograms.ebo@dot.ny.gov for upload.

4. Once the project information from the templates is uploaded into EBO, the RLPL or MOPM will be notified.
5. The RLPL or MOPM will notify the Municipality/Sponsor/Grantee that the contract has been loaded into EBO.
6. The qualified consultant or the low bidder must enter their SDVOB participation into EBO.
7. The Municipality/Sponsor/Grantee, RLPL, or MOPM must review this pre-award data to verify that the qualified consultant or the low bidder met the SDVOB goals or submitted an adequate Good Faith Effort (GFE).

If a qualified consultant or the low bidder:

- Provides commitments that meet or exceed the advertised goals, then the Municipality/Sponsor/Grantee may request the RLPL or the MOPM have the contract awarded in EBO and award the contract.
- Does not provide commitments that meet or exceed the advertised goals, but can demonstrate adequate Good Faith Efforts (GFEs) to meet the goals:
 - The Municipality/Sponsor/Grantee must submit an **SDVOB Waiver Request Form**, with supporting justification, to the RLPL or MOPM to request a goal waiver.
 - The Municipality/Sponsor/Grantee must obtain the NYSDOT approval of the SDVOB Waiver Request prior to awarding the contract.

If the Municipality/Sponsor/Grantee determines that the qualified consultant or the low bidder did not demonstrate adequate GFEs to meet the goals, the Municipality/Sponsor/Grantee should present its recommendation to award to the next qualified consultant or lowest bidder with analysis and supporting documentation to its management as well as to the RLPL or MOPM for approval prior to proceeding with the award. Include the following with the recommendation:

- State the specific non-compliant actions,
- Cite the specification and regulation for each non-compliant action,
- Provide calculations of the amount achieved toward the SDVOB goal,
- Provide analysis of the feasibility of the SDVOB goal,
- Provide information on outreach to Low Bidder to meet the SDVOB goal,
- Information on the Second Bidder's goal demonstration; and
- Any other relevant information.

The Municipality/Sponsor/Grantee must follow their administrative processes as their requirements state. If it is determined that the qualified consultant and the low bidder did not conduct adequate GFEs, with agreement from NYSDOT, the Municipality/Sponsor/Grantee may

disqualify the qualified consultant or the low bidder and award to the second qualified consultant or low bidder who has successfully met the SDVOB goal or demonstrated adequate GFEs.

NYSDOT will provide the reviewed and completed SDVOB Waiver Request to the Municipality/Sponsor/Grantee. NYSDOT approval of the SDVOB Waiver Request must be received prior to the award of the contract.

Post Award

If a consultant/contractor fails to attain its SDVOB commitment on a contract, including differences based on quantity or performance requirement changes, the Municipality/Sponsor/Grantee must submit a **SDVOB Waiver Request** when the contract is approximately 75% completed to the RLPL or MOPM. The request must document the goals, commitments, attainments, and Good Faith Efforts to meet the commitments, along with supporting justification.

If a consultant/contractor fails to attain its SDVOB commitment, the Municipality/Sponsor/Grantee may suspend contract payments in accordance with the contract agreement with the consultant/contractor. The consultant/contractor may be directed to comply with the Municipality's/Sponsor's/Grantee's lawful procedures upon due notice in writing to the consultant/contractor, including cancellation, termination, or suspension in whole or in part in accordance with the contract agreement between the consultant/contractor and the Municipality/Sponsor/Grantee.

When a Municipality/Sponsor/Grantee determines that a consultant/contractor is not in compliance with the requirements of the contract and the consultant/contractor refuses to comply with such requirements, or if a consultant/contractor is found to have willfully and intentionally failed to comply with the SDVOB participation goals, the consultant/contractor shall be obligated to pay to the Municipality/Sponsor/Grantee liquidated damages up to 20% of the portion of the consultant/contractor's contracts and/or subcontracts, funded in whole or in part by the Municipality/Sponsor/Grantee agreement, to which contract goals are established in accordance with NYSDOT guidance. The State may also assess liquidated damages against the Municipality/Sponsor/Grantee.

The Municipality/Sponsor/Grantee shall not take any non-compliance actions until review and approval have been completed by NYSDOT and notification made to the Municipality/Sponsor/Grantee.

Good Faith Efforts (GFEs)

To assist the qualified consultant or low bidder in developing an appropriate justification for GFEs. See Good Faith Efforts Guidance at [Good Faith Efforts Document Guidance](#).

Qualified consultant or low bidder's Good Faith Efforts documentation shall include, but is not limited to:

3. Evidence of outreach to SDVOB and SDVOB responses,
4. Copies of advertisements in appropriate general circulation, trade, and veteran-oriented publications for participation by SDVOBs,
5. Dates of any meetings with SDVOBs; and
6. Documentation of actions taken to reasonably structure the Contract scope to maximize opportunities for SDVOB participation.

SDVOB Reporting

The Municipality/Sponsor/Grantee shall monitor all SDVOB participation through EBO. Municipality/Sponsor/Grantee must ensure that the consultant/contractor enters all data into EBO before NYSDOT will distribute the final payment of the project to the Municipality/Sponsor/Grantee.

SDVOB Participation on Emergency Contracts

Contractors with Emergency contracts are encouraged to consider and include SDVOB firms to the extent appropriate and feasible. NYSDOT may require the contractor to submit a utilization plan and to comply with the post-award requirements during the life of the contract. "Where and When" or "Standby" types of contracts are not necessarily emergency contracts as portions of the scope may be reasonably projected.

Sponsor should consult their RLPL or MOPM and the ODO prior to setting the SDVOB goals on such contracts.

Implementation Details

All future non-federal aided contracts entered into by Municipalities/Sponsors/Grantees of State grant funds must conform to this guidance.

Guidance can be found ~~on~~ in the [Civil Rights Service-Disabled Veteran-Owned Business Program](#).

This guidance does not apply to formula-based legislated aid to localities, including but not limited to, Consolidated Local Street and Highway Improvement Program (CHIPs) and Statewide Mass Transportation Operating Assistance (STOA) program.

APPENDIX 13-7

GOOD FAITH EFFORTS (GFE) DOCUMENTATION GUIDE

Appendix 13-7: Good Faith Efforts

To be a responsible and/or responsive Bidder, your firm must meet the Disadvantaged Business Enterprise (DBE) or Minority Business Enterprise (MBE), Women's Business Enterprise (WBE), and Service-Disabled Veteran-Owned Business (SDVOB) goal(s) on the contract or provide documentation to support Good Faith Efforts taken to meet these goal(s). Actions to meet the goal(s) should begin immediately upon a firm's intent to work for NYSDOT on a project.

The Bidder can meet this requirement during the pre-award or pre-designation stage in two ways:

1. The Bidder can document commitments that meet the goal(s).
2. If the Bidder does not document enough commitments toward meeting the goal(s), the Bidder can provide documentation showing detailed, tangible, result-oriented efforts that show the Bidder's attempts to fulfill the goal(s).

Per NYSDOT Standard Specs §102-12 H. *Good Faith Efforts*, should you be selected as the apparent low bidder or pre-designated firm, all Good Faith Effort documentation will be evaluated prior to the actual award of the contract to your firm.

THE GUIDANCE PROVIDED BELOW OUTLINES WHAT CONSTITUTES SUFFICIENT AND COMPREHENSIVE GOOD-FAITH EFFORTS.

Additional guidance can be found in the [DBE/MBE/WBE/SDVOB Contractors Solicitation and Good Faith Efforts Guide](#) located on the NYSDOT website.

Pre-Letting & Pre-Designation Good Faith Efforts

Once you have made the decision to entertain bidding on a project you should, at a minimum:

1. Analyze each item in the scope of work for a project and determine what items of work will provide subcontracting opportunities.
2. Search the appropriate registry for certified firms:
 - a. For DBE search [New York State Unified Certification Program \(NYSUCP\) Directory](#).
 - b. For MBE and WBE search ESD Directory, search the [New York State Contract Directory](#).
 - c. For SDVOB search: Office of General Services [Directory of New York State Certified Service-Disabled Veteran-Owned Businesses](#).

Tailor the search to those firms with business descriptions or NAICS codes that are most appropriate for the work identified. NYSDOT has developed a Crosswalk chart that equates NYSDOT Work Codes/ Pay Items with NAICS/NIGP codes.

3. Notify those firms of your intent to bid via email and telephone, requesting written feedback on their interest in participation on your contract.

4. Ensure adequate time is given to the DBE/MBE/WBE/SDVOB firms to offer responses.

For more information regarding NAICS, go to the [NAICS directory](#) at the U.S. Census website.

The Crosswalk chart is located at the NYSDOT [Office of Construction: Forms](#) website.

Once a firm has been deemed a low bidder or selected for pre-designation, commitments to DBE/MBE/WBE/SDVOB firms must be entered into the Department's civil rights reporting software program Equitable Business Opportunity (EBO). All DBE/MBE/WBE/SDVOB firms are required to acknowledge the items and dollar commitments assigned to them in EBO during the pre-award process.

Any shortfall in goal commitment requires supporting documentation to be provided to show all efforts taken. These Good Faith Efforts should include, at a minimum:

Required Documentation of Good Faith Efforts	
<input type="checkbox"/>	Completed AAP-10 Solicitation log: This log should list only those firms that were directly solicited. Do not list mass emailing's performed. Outreach should be narrowly focused, targeted and result oriented. <u>NOTE:</u> for the AAP-10 to be accepted it must be completed according to instructions provided.
<input type="checkbox"/>	Detailed explanation identifying any circumstances unique to the contract that were deterrents to meeting the goal(s) (e.g., night work, small quantities over multiple locations, specialized work, PLA, etc.). The explanation should also include detailed rationale as to why a specific scope of work in the project is not considered to be a subcontract item, and therefore was not solicited for.
<input type="checkbox"/>	Copies of ads placed for solicitation.
<input type="checkbox"/>	Copies of <u>all</u> registry searches performed including those searches that resulted in no certified firms for a specific scope of work.
<input type="checkbox"/>	Copies of emails and/or faxes that show "direct" scope of what you solicited the subcontractor/supplier, fabricator, etc. to do or provide and their responses.
<input type="checkbox"/>	Evidence that off-site firms and services were entertained (e.g., material suppliers, trucking, fabricator, manufacturer, etc.).
<input type="checkbox"/>	Copies of documentation showing negotiations took place between low bidder and prospective subcontractor or other firms (supplier, manufacturer, fabricator, etc.).
<input type="checkbox"/>	Quotes from the selected firms and quotes received when a specific scope of work was given to a non-certified firm versus a certified firm (when certified firm's quote was deemed unreasonable or excessive).
<input type="checkbox"/>	Detailed explanation for any scope of work deemed "self-performing" without intent to split the work (when there are DBE or MBE/WBE/SDVOB availability and goal has not been met).
<input type="checkbox"/>	Supporting documentation of any and all additional efforts performed prior to letting or pre-designation date.

Examples of insufficient/unacceptable documentation includes:

- “In-house” generated lists that do not include DBE or MBE/WBE/SDVOB targeted firms.
- “In-house” generated lists that do not identify firms for specific work items or descriptions being solicited.
- Copies of redundant emails to DBE/MBE/WBE/SDVOB firms containing identical language.
- Unsubstantiated response of non-interest from DBE or MBE/WBE/SDVOB firms.
- Numerous copies of the entire contract sent to each firm to attempt to provide quantity in lieu of quality.

APPENDIX 13-8 LINKS

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
2010 ADA Standards for Accessible Design	https://www.ada.gov/law-and-regs/design-standards/2010-stds/
STATE LAWS & REGULATIONS	
5 NYCRR Part 140: Definitions	https://cdn.esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REGS.pdf
5 NYCRR Part 142.2(d): Determining goals for a State contract	https://govt.westlaw.com/nycrr/Document/4e8b8082cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)
5 NYCRR Part 104-145: Division of Minority and Women’s Business Development	https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I850b0fa0ba4411dd9542e0ba6da0bcf0&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)
9 NYCRR Part 252.2	https://govt.westlaw.com/nycrr/Document/1e8529745221211e4a6bf0000845b8d3e?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)
NYSDOT POLICIES, PROCEDURES, & GUIDANCE	
Contract Templates/Civil Rights Forms (not in EBO)	https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights
DBE/MBE/WBE/SDVOB Contractors Solicitation and Good Faith Efforts Guide	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights
Equitable Business Opportunities Solutions (EBO)	https://www.dot.ny.gov/dotapp/ebo
Limited English Plan	https://www.dot.ny.gov/divisions/policy-and-strategy/public-trans-respository/Attachment%20D-1%20LEP_Plan.pdf
M/WBE Goal Assessment Checklist	https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/repository/MWBE%20Goal%20Assessment%20Checklist.xlsx
M/WBE Pre-Advertisement Goal Modification Request	https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program

M/WBE Waiver Request	https://www.dot.ny.gov/dotapp/ebo
Minority and Woman Owned Business Enterprises Program	https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program
Office of Construction, Forms (Crosswalk Chart)	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights
SDVOB FY2021 Goal Plan	https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SERVICE%20DISABLED%20VETERAN%20Master%20Goal%20Plan%20DRAFT%202020-2021.pdf
SDVOB Good Faith Efforts Documentation Guidance	https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program
SDVOB Pre-Advertisement Goal Modification Request	https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SDVOB%20Pre-Letting%20Waiver%20Request%20Template.doc
SDVOB Waiver Request Form	https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/20190220_SDVOBRequestforWaiverForm%20(1).doc
Service Disabled Veteran-Owned Business (SDVOB) Program	https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program

ADDITIONAL RESOURCES

Empire State Development: Minority and Women's Business Development Reports, Annual Reports (Disparity Studies)	https://esd.ny.gov/mwbe-reports
New York State Contract System	https://ny.newnycontracts.com/
New York State Unified Certification Program (NYSUCP) Directory	https://nysucp.newnycontracts.com/
Office of General Services, Directory of New York State Certified Service-Disabled Veteran-Owned Businesses	https://online.ogs.ny.gov/SDVOB/search
United States Census, North American Industry Classification System (NAICS) Code Directory	https://www.census.gov/naics/

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**New York State
Department of Transportation
Local Projects Manual**

**Chapter 14
Advertisement, Contract Letting,
and Award**



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Table 14-1: Sponsor’s New York State Contract Reporter Registration Steps6

ACRONYMS

CCA-2	New York State Uniform Contracting Questionnaire	LPB	Local Programs Bureau
CMP	Construction Management Plan	M/WBE	Minority/Woman-Owned Business Enterprise
DBE	Disadvantaged Business Enterprises	NYSCR	New York State Contract Reporter
EBO	Equal Business Opportunity	PS&E	Plans, Specifications, and Estimates
EEO	Equal Employment Opportunity	RLPL	Regional Local Project Liaison
FHWA	Federal Highway Administration	UCP	New York State Unified Certification Program
GFE	Good Faith Effort	SDVOB	Service-Disabled Veteran-Owned Business

NOTE

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter links) can be found at the end of this chapter, in **Section 14.9 References, Chapter 9, Advertisement, Contract Letting, and Award.**

14.1 INTRODUCTION

This chapter describes the various phases of the contracting process including solicitation of bidders (advertising), bid opening, bid analysis to identify the lowest bidder, and contract award and documentation for locally administered 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 [LPM Chapter 12, Section 12.2.2](#) and [Appendix 12-3](#)).

The following federal regulations apply to ALL projects:

- Advertising for bids and proposals ([23 CFR 635.112](#)),
- Method of Construction ([23 CFR 635.104](#)),
- Participation by Disadvantaged Business Enterprises (DBE) 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 regulations, federal law prevails; with the exception when State and municipal laws, rules, and regulations may be stricter and therefore have precedence.

14.2 ADVERTISING

Advertising for all federal aid construction contracts must meet federal requirements and foster widespread competitive bidding. When the contract bid documents, including Plans, Specifications, and Estimate of quantities (PS&E), have been assembled, and approved by the RLPL and the Sponsor receives Federal Authorization to Proceed from the RLPL, the Sponsor is required to advertise the contract for bidding in accordance with [23 CFR 635.112](#). The Sponsor could forfeit federal reimbursement if the advertisement of a contract takes place before receiving a Notification to Proceed.

New York State requires the publication of the solicitation of bids for a construction contract to be advertised in [The New York State Contract Reporter](#) (NYSCR) for at least three weeks (15 business days) before the opening of the bids. Additionally, the Sponsor is encouraged to place additional advertisements in other appropriate publications (e.g., local newspapers, trade journals). The use of several forms of advertising publications will help avoid a single bidder, as well as give more opportunities to fulfill both DBE and EEO requirements. Advertising costs should be charged to the construction phase. A Construction Advertisement Checklist and a sample Notice to Bidder – Advertisement to Bid indicates the information to be included in an advertisement (see [Appendix 14-7](#) and [Appendix 14-8](#)).

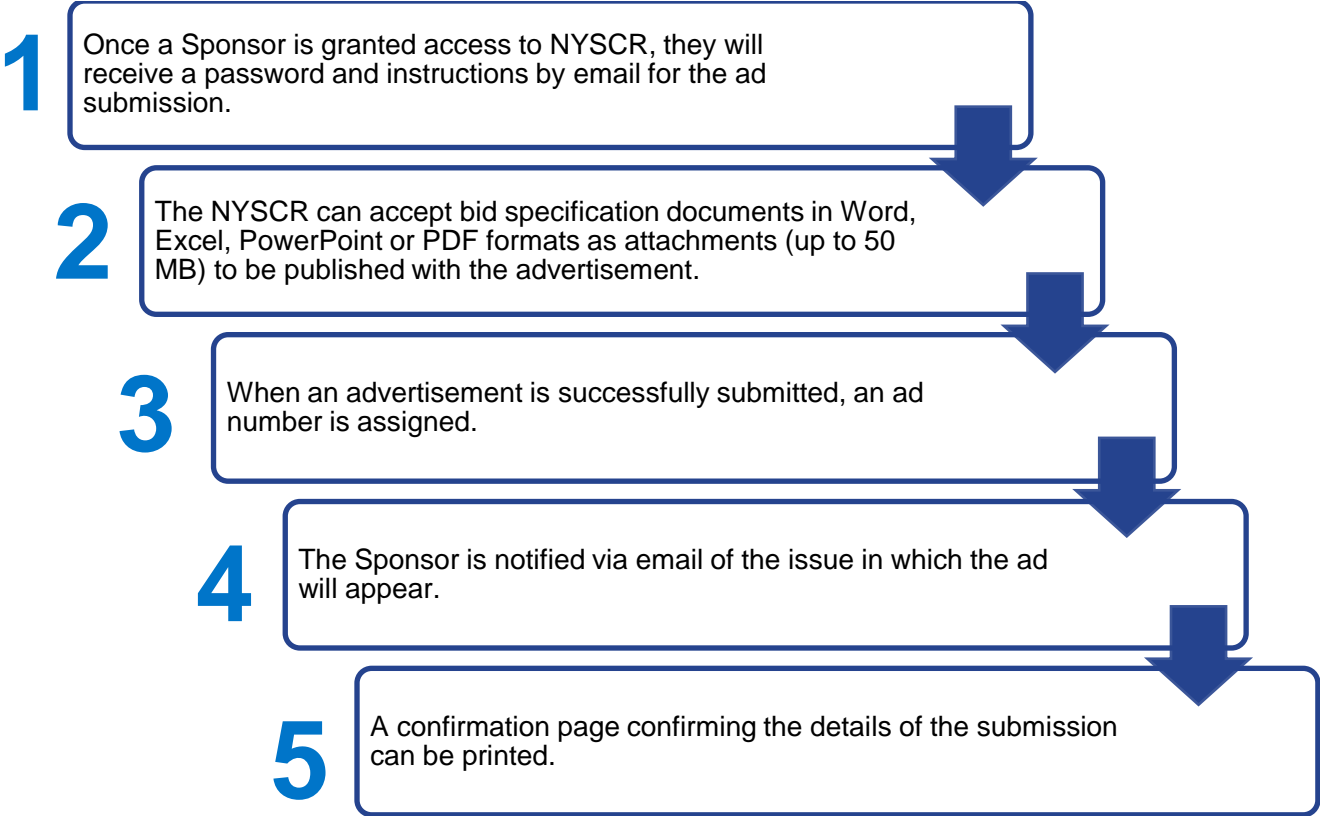
Construction contracts must be advertised in the New York State Contract Reporter.

The advertisement must identify the EEO goals for women and minorities in every contract regardless of fund source. The advertisement must identify DBE contract goals (federal funds), if applicable. If a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible. If the contract is state-funded (non-federal funds) the advertisement must identify Minority/Women-Owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) goals.

14.2.1 New York State Contract Reporter (NYSCR)

The NYSCR 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 transportation projects) for the procurement of goods and services must be published in the NYSCR. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered before submitting advertisements and may do so from the [NYSCR registration website](#).

Figure 14-1: Sponsor’s New York State Contract Reporter Registration Steps



Additionally, the NYSCR can capture and provide in an Excel format, a list of 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 NYSCR (email confirmations, downloaded spreadsheets, screen captures of advertisements, etc.) should be printed and kept in the project file.

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

The earliest bid due date allowed in the ad insertion form shall be 15 business days (Monday-Friday) after the advertisement is published. The insertion, publication, and earliest due dates can be calculated by using the Publication Calculator Tool on the NYSCR's website. If an earlier bid due date becomes necessary, the Sponsor must get approval from the RLPL, with help from the NYSCR, which can be sought through the NYSCR Contact Us page, link provided in [Section 14.9 Reference](#) or by calling Empire State Development, Procurement Assistance Services/NYSCR at (518) 292-5266.

Contracts to be awarded on a sole source or single source basis must have prior approval from the Main Office Local Programs Bureau (LPB). If approved, they will also need to be advertised.

Sole source is a situation in which only one contractor can supply the goods or services.

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.

14.2.2 Instructions to Bidders Regarding Proposed DBE Participation

[NYSDOT Standard Specification §102-12](#) indicates that the bidder shall submit a complete DBE Participation Package with its proposal which includes DBE commitments (i.e., DBE name, address, work category, and commitment amount); DBE confirmation on Department forms (i.e., AAP 20, AAP 22, or AAP 23 depending on Work Category) for each DBE commitment; and good faith effort (if DBE commitments do not meet the goal). In addition, bidders shall submit completed Appendix 12-11 CONR80LL Bidder's List with their bid. To assist the Sponsor with collecting this information, see [Appendix 12-10 \(formerly Appendix 14-9\), Summary of Federal DBE Commitments and Bid Requirements \(AAP14LL\)](#) .

14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, and prior to the opening of bids. The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.

The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.

The following should be considered when a Sponsor is contemplating amending a contract:

- If significant changes to the scope or scale are necessary, the Sponsor should seek advice from the RLPL (changes may require FHWA approval if the project is on the NHS or a Project of Division Interest). If the changes are not allowed or appropriate to be incorporated by amendment the Sponsor should cancel the advertisement, redesign the project, and then re-let the project.
- An amendment should be issued when the following errors are discovered:
 - Any contract pay-item quantity change of $\pm 20\%$ in Engineer's Estimate.
 - 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 $\pm 1\%$.
 - DBE or MBE/WBE/SDVOB goal(s) incorrectly stated in the contract.
 - EEO goals incorrectly stated in the contract.

14.4 BID LETTING AND BID ANALYSIS

Per [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 before opening bids and the announcement of the apparent low bidder (see [LPM Section 12.5.9](#)). After all bid totals have been read aloud, the apparent low bidder is announced, and all bidders are informed that award is pending a complete bid analysis including mathematical verification, affirmation that the low bidder is responsible, and acceptance of the DBE/MBE/WBE/SDVOB Participation Package. The bid analysis shall be concluded, and contract award shall be made within 45 days as noted in [New York State Finance Law Section 140](#) and [NYS General Municipal Law Section 105](#). If the award is not completed within 45 days, the contractor may withdraw their bid from consideration.

Bids must be publicly opened and read aloud.

Negotiation with any bidder (i.e., adjusting quantities, changing unit prices, adding, and subtracting work, etc.) before contract award is prohibited per [23 CFR 635.113\(a\)](#).

The Sponsor should use [Appendix 14-6, After Letting Checklist](#), as a resource for the necessary steps and documentation from Letting to Award.

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 [9 NYCRR 4.170](#) whereby a contractor/vendor may be deemed “not responsible.”

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

- For all contracts, the [New York State Uniform Contracting Questionnaire \(CCA-2\)](#) is used in the qualification of an entity as a “responsible bidder.”
 1. The NYSDOT Contract Management Bureau 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 completed by the low bidder and submitted to the Contract Management Bureau as instructed. A link to the CCA-2 questionnaire is on [NYSDOT’s website](#). Similar checks must be conducted on subcontractors (see [LPM Chapter 15](#)). RLPLs should access the [AASHTOWare Project Preconstruction database](#) to confirm that a vendor (contractor and subcontractors) has an approved CCA-2 on file.
 2. The United States General Services Administration’s System for Award Management (SAM) [Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid](#).
 3. NYS Department of Labor’s monthly [List of Employers Ineligible to Bid on or be Awarded any Public Work Contract](#).
 4. NYS Department of State’s [Corporation/Business Entity Database](#) to ensure that Corporations, Professional Corporations, Limited Liability Companies, and Limited Liability Partnerships have the proper authority to conduct business in New York State.
 - The Sponsor should print out the result of their search of the above databases and keep it in the project files. Acknowledgment of certification is noted in the “Bid Opening, Verification, and Sponsor Recommendation” letter ([Appendix 14-1](#)) to be provided with the Award Package as noted in [Section 14.7](#).
 5. Office of Safety and Health Administration (OSHA) website for [safety violations for a given firm](#).

6. In the event, there is an OSHA violation against the low bidder, it should not be an automatic disqualification. Provide a discussion indicating the violation, if it has been addressed or is being addressed as a statement to be provided with the Award Package as noted in Section 14.7.
7. **NYS Department of Labor Contract Registry** website for Certificate of Registration for all Contractors.

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. The preparation of a Tabulation of Bids (see [Appendix 14-4](#)) should be completed to include all bidders. A bid analysis generally consists of a comparative review between the Engineer's Estimate and the apparent low bidder's bid to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid. Information relative to the other bidders in the Tabulation of Bids is of value during the bid analysis if significant variations become apparent between the apparent low bid and the Engineer's Estimate.

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 apparent low bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may indicate 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.

2. 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.

3. Evaluate bids with significant variations from the Engineer's Estimate, among the bidders, or 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.

Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obviously 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 apparent low bidder about whether the general location of the contract is convenient for the apparent low bidder and whether the apparent low bidder will ultimately yield the lowest cost.

Any discussion with the apparent low bidder during procurement is subject to [New York State Procurement Guidelines](#), as stated in [Article 11 of 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\(a\)](#). Discussions should be factual without discussion of the other bids or the Sponsor's contract award intentions. Contacting the apparent low bidder should not be a routine practice. If the low bidder cannot justify 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 apparent low bidder or needs more time to evaluate qualifications of the apparent 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 via email at: MO-LocalProgramsBureau@dot.ny.gov. If the Sponsor has concerns with an apparent low bidder, documentation supporting the concerns should be provided to NYSDOT.

14.4.3 Reasonableness Justification

When the apparent low bid is more than 15% higher or lower than the Engineers Estimate a reasonable justification is to be included in the bid analysis. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineer's 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 apparent low bidder and its ability to complete the contract according to 9 NYCRR 4.170. 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. Justify if the determination does not coincide with the "recommendation to award" by the structural designer.
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 canceling 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 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 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. Based on 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 the contract were to be rebid. The Sponsor will provide the RLPL with the analysis and their determination on how they plan to proceed. The RLPL will review the analysis and provide the Sponsor with an

acknowledgment and what steps are necessary. If the Sponsor has proposed to rebid the project, then the RLPL must be advised and concur with the process. The Sponsor will need to provide modified contract bid documents as outlined in LPM Chapter 12 before receiving authorization to re-advertise the project. If the Sponsor has proposed to not rebid based on their analysis and concurrence with the RLPL, the Sponsor will proceed with the award process.

14.4.5 Rejection of All Bids

It may be necessary to reject all bids. Reasons to reject all bids are:

- Inadequate competition due to a limited number of bidders,
- High bids due to unclear requirements,
- Bids where additional costs could not be justified; or
- Other circumstances such as permits not being received.

A written discussion provided to the RLPL 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, such as the bidding environment or time of the year when the job will be let. If after consultation and written concurrence 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. **General Municipal Law 103(11)** “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.

14.4.7 Move to Second Bidder

On occasion, the Sponsor will proceed to the second bidder. These occasions are:

- Bidder Error as noted in [Section 14.4.6](#).
- Verified documentation determining that the apparent low bidder is not a 'responsible bidder'.
- Documented justification of objection to the apparent low bidder by Sponsor.
- Failure of the apparent low bidder to provide adequate documentation to a Good Faith Effort per Standard Specification §102-12.
- Failure of the apparent low bidder to provide adequate justification to a significantly unbalanced bid proposal.
- Failure of the apparent low bidder to be registered with NYS Department of Labor prior to submitting a bid.
- Failure of the apparent low bidder to submit the required Bidder's List (i.e., information regarding Subcontractors who provided quotes prior to letting), [Appendix 12-11](#), with their bid.
- The apparent Low Bidder has been deemed non-responsive due to failure to submit a complete DBE/MBE/WBE/SDVOB Participation Package and/or sufficient Good Faith Efforts.

If the Sponsor moves to the apparent second low bidder, the Sponsor must provide the justification to the RLPL. Once the RLPL has concurred, the Sponsor will complete the bidder responsibility and analysis ([Sections 14.4.1](#) through [14.4.1.3](#)) for the second bidder. Documentation concurring with the move to the second bidder should be provided with the Award package.

14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract's DBE/MBE/WBE/SDVOB participation. There are three distinct stages of DBE/MBE/WBE/SDVOB participation: 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 goal is expressed as a dollar amount. During the bid process, the bidder provided their DBE Participation Package (i.e., [Appendix 12-10, Form AAP 14LL Summary of Federal DBE Commitments and Bid Requirements](#), DBE confirmations (i.e., AAP 20, AAP 22, or AAP 23 depending on work category) and good faith

efforts (if required). For MBE/WBE/SDVOB, the bidder submits their complete MBE/WBE/SDVOB Participation Package within 10 days after letting. After the contract award, attainment is measured after completion of the work in dollars paid to certified DBE/MBE/WBE/SDVOBs.

To comply with Civil Rights requirements, NYSDOT utilizes the Civil Rights monitoring and reporting software, Equitable Business Opportunity Solutions (EBO). It is the Sponsor's responsibility during pre-award to confirm that the apparent low bidder has committed to meeting the DBE/MBE/WBE/SDVOB participation goal(s) or has demonstrated good faith efforts to do so. If the apparent low bidder has not met the goal, a review of good faith efforts (GFE) and concurrence from the RLPL and NYSDOT's Main Office Local Programs Bureau is required. If the apparent low bidder fails to provide sufficient DBE commitments to meet the goal and/or provide sufficient GFE with their bid or fails to provide sufficient MBE/WBE/SDVOB commitments and/or good faith efforts, the Sponsor can deem them non-responsive. If the low bidder is deemed non-responsive, and believes they have good cause, they have the option to request an Administrative Reconsideration within 5 calendar days of the determination. If an Administrative Reconsideration deems the bidder as non-responsive, the Sponsor can move to the second low bidder. The implementation of a Sponsor's Administrative Reconsideration process is required under 49 CFR 26.53(d).

Sponsor is responsible for confirming apparent low bidder's commitment to DBE participation goal.

When a bidder requests an Administrative Reconsideration, the following steps should be taken:

1. The bidder will request in writing an Administrative Reconsideration within 5 calendar days of the determination of being non-responsive.
2. The bidder will meet in person with the Sponsor's reconsideration official concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
3. The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
4. The bidder will be given the opportunity to provide argument or written documentation of Good Faith Efforts made prior to the letting.
5. The Sponsor will send a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so at the time of letting.

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.

14.5.1 Participation Package

Review of the low bidder's DBE Participation Package is required during pre-award once the low bidder has been identified. Prior to verification of the bids, the Sponsor will conduct a preliminary review of the apparent low bidder's DBE Participation for completeness. The Sponsor will ensure that DBE confirmations (i.e., AAP 20, AAP 22, or AAP 23 depending on work category) were received for each DBE shown on [Appendix 12-10, Form AAP 14LL Summary of Federal DBE Commitments and Bid Requirements](#), and that the information is complete (i.e., scope of work, \$ amounts, and signatures). If the DBE Commitments do not meet the goal, the Sponsor will verify that the bidder submitted good faith efforts. If the apparent low bidder's DBE Participation Package is incomplete, their bid will be rejected as informal and the second low bidder's DBE Participation Package will be reviewed for completeness. Once the apparent low bidder's DBE Participation Package has been deemed complete, the bids can be verified.

For 100% State funded contracts, after verification of bids, the Sponsor shall notify the low bidder to submit their MBE/WBE/SDVOB Participation Package with a deadline of 10 calendar days after letting.

The following information must be reviewed by the Sponsor to determine whether the low bidder was responsive in the submittal of their DBE/MBE/WBE/SDVOB Participation Package with their bid:

- All proposed DBEs shown in the low bidder's commitments are listed in the [New York State Unified Certification Program \(UCP\)](#) Directory; all M/WBEs are listed in the directory of certified firms on the [Empire State Development](#) website; and all SDVOBs are listed in the directory of certified firms on the [NYS Office of General Services](#) website.
- All proposed DBE/MBE/WBE/SDVOBs are listed in the directories to perform the work that they are being proposed to perform (NOTE: The NAICS codes and/or "Certified Business Description" should be reviewed against the proposed work. Do not use the NYSDOT Work codes as not all certifying agencies use NYSDOT work codes.)
- All proposed DBE/MBE/WBE/SDVOB participation is identified with the correct work type such as construction, material supplier, professional services, etc.
- A completed [AAP 20 DBE Subcontractor / Professional Service / Work Service Commitments/Confirmation](#) form was submitted with the bid for each proposed DBE Subcontractor, Professional Service, and Work Service as part of the DBE Participation Package; this form can be found at [NYSDOT's Office of Construction – Forms](#).
- A completed [AAP 22 DBE Material Commitments/Confirmation](#) form was submitted with the bid for each proposed DBE Manufacturer, Fabricator, Material Supplier, Distributor, and Broker as part of the DBE Participation Package; this form can be found at [NYSDOT's Office of Construction – Forms](#). The Sponsor shall verify the appropriate work category (and associated credit), as shown on the AAP 14LL, is correct based on the responses to questions on the AAP 22.

- A completed [AAP 23 DBE Trucking Commitment Information](#) form was submitted with the bid for each proposed DBE Trucking Firm as part of the DBE participation Package; this form can be found at [NYSDOT's Office of Construction - Forms](#). The Sponsor shall ensure that **no** truck brokering or multi-tier trucking is being proposed.

14.5.2 Good Faith Efforts (GFE)

If the apparent low bidder does not have sufficient DBE/MBE/WBE/SDVOB commitments to meet the DBE/MBE/WBE/SDVOB goal(s), the Sponsor will evaluate the good faith efforts the low bidder made to obtain DBE/MBE/WBE/SDVOB participation to determine if the efforts are sufficient enough to recommend award of the contract.

The Sponsor shall reference NYSDOT Standard Specifications §102-12H. *Good Faith Efforts* and good faith effort guides at [NYSDOT's Office of Construction - Forms](#) to determine if the good faith efforts are sufficient.

The GFE supporting documentation includes, but is not limited to, the following:

- [Form AAP 10 DBE/MBE/WBE/SDVOB Solicitation Log](#).
- Copies of correspondence, faxes, and e-mails sent to prospective DBE/MBE/WBE/SDVOBs.
- Copies of advertisements (e.g., newspaper ads).
- Copies of quotes from non-selected DBE/MBE/WBE/SDVOBs as well as quotes from the selected non-DBE/MBE/WBE/SDVOBs.

At a minimum, the Sponsor should perform the following analysis for GFE and provide a summary when transmitting to the RLPL:

- Check the DBE/MBE/WBE/SDVOB certification status of each firm contacted.
- If the firm cannot be found in the Directory, confirm the certification status with the certifying agency responsible for the firm. Never accept copies, faxes, or scans of certification letters.

Compare the work in the contract against:

- Work for which DBE/MBE/WBE/SDVOBs were solicited.
- Work that the DBE/MBE/WBE/SDVOBs are listed to perform.
- Compare the location of each DBE/MBE/WBE/SDVOB firm to ensure an exhaustive search was performed for each item, within an appropriate radius of the project in accordance with [NYSDOT Standard Specification §102-12H. Good Faith Efforts](#).

- Identify available participation opportunities and compare them against the type of work solicited.
- Ensure all types of DBE/MBE/WBE/SDVOB firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
- Cross-reference letters, faxes, [AAP 10](#), etc.

Compare the DBE's price against:

- Engineer's Estimate
- Bid price
- Weighted Average Item Price Report data

Where does the DBE's price fall in comparison to all the above:

- Contact a sample of the firms listed on the AAP 10 to verify solicitation effort stated in the solicitation log and other documents:
 - When contacted.
 - By whom.
 - By what method(s).
 - How many times.
 - For what work.
 - Was quote/bid submitted.
 - Were plans provided/made available – how and when?
- Low bidder's follow-through.
- Compare all efforts against [Appendix A, Standard Clauses for NYS Contracts](#) to [49 CFR 26](#).

The Sponsor should discuss any document deficiencies with the apparent low bidder. If the Sponsor is satisfied, the documentation is provided to the RLPL for concurrence with the Office of Civil Rights.

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:

- State the specific non-compliance actions.
- Cite the specification and regulation for each non-compliance action or class of actions.

- Provide calculations of the amount achieved toward the DBE/MBE/WBE/SDVOB goal and the difference.
- Provide an analysis of the feasibility of the DBE/MBE/WBE/SDVOB goal. For Federally funded contracts, compare the DBE commitments made by the other bidders.
- Provide a timeline or chronology of events.
- Calculations of the difference between the first and second low bidders.
- Any other relevant information.

Once the Sponsor determines that the GFE is adequate, they will forward the GFE documentation to the RLPL for concurrence by NYSDOT's Main Office of Diversity and Opportunity. Once NYSDOT's review is complete, the Sponsor shall notify the low bidder that their DBE/MBE/WBE/SDVOB Participation Plan has been accepted and to input their DBE/MBE/WBE/SDVOB commitments (exactly as shown in their bid) into EBO and the Sponsor can proceed with its award process.

The Sponsor shall not award the project to the apparent low bidder until concurrence is received from NYSDOT of both the GFE and Award Package. Notice to Proceed issued by the Sponsor to the apparent low bidder prior to NYSDOT issuing Authorization to Proceed without NYSDOT review and concurrence may result in a loss of federal aid.

The Sponsor shall not award the project until concurrence is received from NYSDOT of both the GFE and Award Package.

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 deem the low bidder as non-responsive. The low bidder has the option to request an Administrative Reconsideration. If the Administrative Reconsideration process determines the low bidder to be non-responsive, the Sponsor can request concurrence from the RLPL to award to the second low bidder who has successfully met the DBE goal or has submitted sufficient GFE.

The DBE/MBE/WBE/SDVOB goal is in effect for the duration of the contract. If the DBE/MBE/WBE/SDVOB goal is not met at the time of award and was awarded based on an approved GFE prior to advertisement, then the Sponsor must ensure Good Faith Efforts are made throughout the life of the contract. The contractor shall periodically review items that are available for DBE/MBE/WBE/SDVOB participation, typically before the beginning of a new construction season and when significant new items of work are added to the contract and conduct additional DBE/MBE/WBE/SDVOB solicitation 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/MBE/WBE/SDVOB goal is met.

The DBE/MBE/WBE/SDVOB Attainment Report from EBO shall be submitted with the Sponsor's request(s) for reimbursement. See [LPM Chapter 5](#) for reimbursement instructions.

14.5.3 Equitable Business Opportunity (EBO)

Project entry into EBO is required during pre-award once the low bidder has been identified and their DBE Participation Package has been deemed acceptable. The following steps are to be completed before the submittal of the Award Package to the RLPL and before award of the contract:

1. After the identification of the apparent low bidder and acceptance of their DBE/MBE/WBE/SDVOB Participation Package, 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 DBE EBO Template Construction** 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 review on the Contract Template to determine if the header information has been completed and that the units of measure being used are correct. If there are errors, the RLPL will return the template to the Sponsor for correction. The RLPL will submit the completed Contract Template via email to localprograms.ebo@dot.ny.gov for upload into EBO.
3. Main Office Local Programs Bureau will notify the RLPL who will then notify the Sponsor that the Template has been successfully loaded into EBO.
4. The Sponsor will notify the apparent low bidder that the contract has been initialized in EBO.
5. The low bidder must enter their DBE commitments (exactly as shown in their bid) into EBO within five (5) calendar days from notification that their DBE Participation Package has been deemed acceptable by the Sponsor. For Non-Federal-Aid contracts, within 10 calendar days from letting, the Low Bidder shall submit a complete MBE/WBE/SDVOB Participation Package into EBO.
6. The Sponsor and RLPL must review the pre-award participation data in EBO to confirm that the information has been input correctly. Once confirmed, each DBE/MBE/WBE/SDVOB shall acknowledge the commitment in EBO within 10 calendar (10) days.
7. The Sponsor must notify the RLPL when the DBE/MBE/WBE/SDVOBs have completed the commitment in EBO.
8. The Sponsor will provide to the RLPL a copy of the Award Notice to the Contractor and the RLPL will notify the Local Programs EBO mailbox the Award date.

14.6 BRIDGE CONSTRUCTION UNIT COST DATA (IF APPLICABLE)

Annually, all states are required to submit to Federal Highway Administration (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, superstructure replacements, or pedestrian bridges.

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 and 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 Datasheet (see [Appendix 14-2](#) for a sample) must be provided to the RLPL, who forwards them to NYSDOT's Main Office. The collected data is provided to FHWA for their program analysis.

14.7 AWARD PACKAGE

NYSDOT delegated oversight authority by FHWA, is responsible for the construction of all Federal-aid projects. When the project is not on the National Highway System or State Highway System, NYSDOT is not relieved of overall project responsibility, 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 14-3](#) for the Contract Award Checklist):

- Proof of Advertising which consists of the ad from the Contract Reporter, local newspaper, and copies of any other advertisements placed, whether in hard copy or electronic media. (see [LPM Section 14.2 Advertising](#)).
- Copy of all amendments issued:
 - Amendments distribution records showing that all amendments were sent to all plan buyers.
 - A record showing receipt of amendments by plan holders/bidders.
- Copy of bid bond and/or bid deposit.
- Bid Opening, Verification, and Sponsor Recommendation Letter (see [Appendix 14-1](#)) and attachments.
- Description from the Sponsor concerning how it intends to inspect and provide quality assurance and quality control, as noted in the approved CMP.
- Bid analysis completed by Sponsor (see [Section 14.4.2](#)).

- Completed CONR80LL Bidder's List ([See Appendix 12-11](#))
- Certification of apparent low bidder responsibility (see [Section 14.4.1 Bidder Responsibility](#)).
- Copy of the confirmation of an approved CCA-2 New York State Uniform Contracting Questionnaire.
- Signed Disclosure of Lobbying Activities Forms (see [Appendix 12-1.7](#)).
- Signed Non-Collusive Bidding Certification (see [Appendix 12-1.14](#)).
- Copy of Certificate of Insurances – Workers Compensation and Disability Benefits (see [LPM Chapter 12.3.8](#)).
- Copy of notarized and signed proposal of the verified apparent low bidder.
- Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) participation ([AAP 33](#) from EBO).
- DBE participation documented on AAP 14LL ([Appendix 12-10](#)) – EBO utilized, and DBEs have acknowledged work. The Concurrence of proposed DBE/MBE/WBE/SDVOB participation by the RLPL prior to award.
- GFE documentation, if the DBE goal appears - the Sponsor cannot award the contract until NYSDOT's Office of Diversity and Opportunity concurs with the GFE.
- DBE/MBE/WBE/SDVOB Material Supplier Commitment Information ([AAP 22](#)) if DBE/MBE/WBE/SDVOB material suppliers are utilized.
- DBE/MBE/WBE/SDVOB Trucking Commitment Information ([AAP 23](#)), if DBE/MBE/WBE/SDVOB trucking firms are utilized.
- Identification of Affirmative Action Representatives in EBO (not required for suppliers)
- Documentation demonstrating that the low bidder met their responsibility for DBE/MBE/WBE/SDVOB participation when goals were established. See [NYSDOT Contract Administration Manual \(CAM\) §102-12](#) and [LPM Chapter 13 Civil Rights Requirements](#).
- Bridge Construction Unit Cost Data (required for all projects with new or replacement bridges, (see [Appendix 14-2](#)).

Sponsors must submit the Award Package for review prior to the award of the contract in order for the RLPL to conduct their review. RLPL will review and issue a Concurrence in Award letter when all questions and comments have been addressed.

14.8 CONTRACT AWARD

Federal aid contracts shall be awarded only based on the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with

“Licensing and qualification of contractors per [23 CFR 635.114\(a\)](#). If the award is not completed within 45 days, the contractor may withdraw their bid from consideration as noted in [140 of the State Finance Law](#) and [Section 105 NYS General Municipal Law](#).

Contracts are awarded based on the lowest responsible bidder.

The Sponsor must certify in writing that all items in the award documentation package have been addressed and request a Concurrence in Award letter from the RLPL. 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 using the Tabulation of Bids (see [Appendix 14-5](#)). 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. After receiving the Concurrence in Award letter from the RLPL, the Sponsor may award the contract, provide notification of the award and a copy of the signed executed contract that includes the Faithful Performance Bond and the Labor and Material Bond to the RLPL, and schedule a Pre-Construction Kick-off meeting to which the RLPL needs to attend.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. See [PDM Chapter 4, Table 4-3](#). Concurrence in the 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 retained as part of the project record by both the Sponsor and the RLPL.

14.9 REFERENCES, CHAPTER 14 ADVERTISEMENT, CONTRACT LETTING, AND AWARD

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
23 CFR § 230, External Programs	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-part230.xml
23 CFR § 635.104, Method of Construction	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-104.xml
23 CFR § 635.112, Advertising for Bids and Proposals	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-112.xml
23 CFR § 635.113(a), Bid Opening and Bid Tabulations	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-113.xml
23 CFR § 635.114(a) and (b), Award of Concurrence	23 CFR 635.114(a)(b)
49 CFR § 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml
STATE AND GENERAL MUNICIPAL LAWS & REGULATIONS	
9 New York State Code, Rules, and Regulations (NYCRR) § 4.170, Executive Order No. 170, Establishing Uniform Guidelines for Determining the Responsibility of Bidders	https://govt.westlaw.com/nycrr/Document/I4efcdfd1cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1
New York State Finance Law, Chapter 56, Article 9 § 140, Disposition of Deposit Accompanying Bid	https://www.nysenate.gov/legislation/laws/STF/140
New York State Finance Law, Chapter 56, Article 11, State Purchasing	https://www.nysenate.gov/legislation/laws/STF/A11
New York State General Municipal Law, Chapter 24, Article 5-A § 103, Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies	https://www.nysenate.gov/legislation/laws/GMU/103

New York State General Municipal Law, Chapter 24, Article 5-A § 103-11, Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies	https://www.nysenate.gov/legislation/laws/GMU/103
New York State General Municipal Law, Chapter 24, Article 5-A § 105, Disposition of Deposit Accompanying Bid	https://www.nysenate.gov/legislation/laws/GMU/105
New York State Office of General Services, New York State Procurement Guidelines	https://ogs.ny.gov/system/files/documents/2024/12/nys-procurement-guidelines.pdf
NYSDOT POLICIES, PROCEDURES, & GUIDANCE	
NYSDOT, Contract Administration Manual (CAM) § 102-12, DBE/MBE/WBE/SDVOB Participation	https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM_Sect102-12.pdf
NYSDOT, Doing Business with NYSDOT>Construction Contractors	https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info
NYSDOT, Federal Aid EBO Template (DBE)	https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights
NYSDOT, Local Project Manual (LPM), Chapter 5, Accounting and Reimbursement Procedures	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1402
NYSDOT, Local Project Manual (LPM), Chapter 12, Construction Contract Requirements	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1435
NYSDOT, Local Project Manual (LPM), Chapter 13, Civil Rights Requirements	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1423
NYSDOT, Local Project Manual (LPM), Chapter 15, Administer Construction Contracts	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1415
NYSDOT, Office of Construction, Forms. (Forms AAP 10, AAP 14, AAP 20, AAP 22, AAP 23, AAP 33 can be found here)	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights
NYSDOT, Project Development Manual (PDM), Chapter 4, Exhibit 4-2, Project Design Phases	https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm

NYSDOT, Standard Specifications, § 102-12, D/M/WBE Participation	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc
NYSDOT, Standard Specifications, § 105-21, Civil Rights Monitoring and Reporting	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc
NYSDOT, Weighted Average Item Price Report Data	https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr

ADDITIONAL RESOURCES

AASHTOWare Project Preconstruction	https://www.aashtowareproject.org/apr-precon
New York State Empire State Development Search Directory	https://ny.newnycontracts.com/FrontEnd/searchcertifiedirectory.asp
New York State Comptroller, For Profit Construction Questionnaire (CCA-2)	https://www.osc.state.ny.us/state-vendors/vendrep/profit-construction-questionnaire-cca-2
New York State Contract Reporter (NYSCR) Registration Website Contact Us Page	https://www.nyscr.ny.gov/ https://www.nyscr.ny.gov/register.cfm https://www.nyscr.ny.gov/contactUs.cfm
New York State Department of Labor, Debarment List	https://apps.labor.ny.gov/EDList/searchPage.do
New York State Department of Labor, Contractor/Subcontractor Registry	https://dol.ny.gov/public-work-contractor-and-subcontractor-registry-dashboard
New York State Department of State, Existing Corporations and Businesses	https://dos.ny.gov/existing-corporations-and-businesses
New York State Empire State Development (ESD), Procurement Assistance Program, Contact Us	https://esd.ny.gov/procurement-assistance-program
New York State Office of General Services (Service-Disabled Veteran’s Business) Search	https://sdves.ogs.ny.gov/business-search
United States Department of Labor, Occupational Safety and Health Administration, Establishment Search (safety violation search)	https://www.osha.gov/ords/imis/establishment.html

**United States Department of Labor,
Office of Federal Contract Compliance
Programs, OFCCP Debarred Companies:
List of Debarred, Suspended, or Voluntarily
Excluded Firms Ineligible for Federal Aid**

<https://sam.gov/content/entity-information>

**New York State Unified Certification
Program (UCP) Directory**

<https://nysucp.newnycontracts.com/>
