

**INVITATION TO BID (ITB) NUMBER 2519C018-F**

**RETURN THIS BID TO THE ISSUING OFFICE AT:**



Department of Transportation & PF  
Division of Supply & Services  
2200 E. 42<sup>nd</sup> Avenue, Room 110  
Anchorage, Alaska 99508

**THIS IS NOT AN ORDER**

**DATE ITB ISSUED: February 7, 2019**

**ITB TITLE: Traffic Marking Paint, Solvent & Paint Beads - Federally Funded**

SEALED BIDS MUST BE SUBMITTED TO THE DOT&PF, ANCHORAGE PROCUREMENT OFFICE FROM WHICH THEY WERE ISSUED AND MUST BE TIME AND DATE STAMPED BY THE PROCUREMENT OFFICE PRIOR TO **2:00PM ON FEBRUARY 19, 2019** AT WHICH TIME THEY WILL BE PUBLICLY OPENED.

DELIVERY DATE: SEE BID SCHEDULE

F.O.B. POINT: SEE BID SCHEDULE

**IMPORTANT NOTICE:** If you received this solicitation from the State's "Online Public Notice" web site, you must register with the Procurement Officer listed on this document to receive subsequent amendments. Failure to contact the Procurement Officer may result in the rejection of your offer.

**BIDDER'S NOTICE:**

Contracts for purchases resulting from this bid will be made utilizing Federal Funds. As such, and per AS 36.30.890, no State of Alaska Bidder or Product Preferences may apply.

**Sec. 36.30.890. Federal Assistance**

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

**2 AAC 12.730. Federal Assistance**

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. Authority: AS 36.30.040; AS 36.30.890

**DAN TRUBIANO  
PROCUREMENT OFFICER**

[daniel.trubiano@alaska.gov](mailto:daniel.trubiano@alaska.gov)

PH: 907-269-0862

FX: 907-269-0872

\_\_\_\_\_  
COMPANY SUBMITTING BID

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

Note: An Alaska Business License will be required prior to award. Out-of-State bidders must also comply with all corporate laws of the State of Alaska regarding performing business in the State.

\_\_\_\_\_  
ALASKA BUSINESS LICENSE NUMBER

\_\_\_\_\_  
VENDOR TAX ID NUMBER

**INSTRUCTIONS TO BIDDERS:**

**1. INVITATION TO BID (ITB) REVIEW:** Bidders shall carefully review this ITB for defects and questionable or objectionable material. Bidders' comments concerning defects and questionable or objectionable material in the ITB must be made in writing and received by the purchasing authority at least five (5) days before the bid opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices. Bidders' original comments should be sent to the purchasing authority listed on the front of this ITB.

**2. BID FORMS:** Bidders shall use this and attached forms in submitting bids. A photocopied bid may be submitted.

**3. SUBMITTING BIDS:** Envelopes containing bids must be sealed, marked, and addressed as shown in the example below. Do not put the ITB number and opening date on the envelope of a request for bid information. Envelopes with ITB numbers annotated on the outside will not be opened until the scheduled date and time.

Bidder's Return Address:

Department Transportation & PF  
2200 E. 42<sup>nd</sup> Avenue, Room 110  
Anchorage, Alaska 99508

ITB No.: **2519C018-F**

Opening Date: **FEBRUARY 19, 2019 at 2:00 PM**

**ELECTRONIC BID SUBMISSION:** If sending electronically; bids must be emailed to [joel.balzer@alaska.gov](mailto:joel.balzer@alaska.gov), no later than the date and time listed on page one of this ITB as the deadline for receipt of bids, and must contain the ITB number in the subject line of the email. Emailed bids must be submitted as an attachment in PDF format. Please note that the maximum size of a single email (including all text and attachments) that can be received by the state is 10mb (megabytes). If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 10 megabytes and each email must comply with the requirements described above. The state is not responsible for unreadable, corrupt, or missing attachments. **It is the bidder's responsibility to contact the issuing office at (907) 269-0867 or 269-0862 to confirm that the bid has been received.** Failure to follow any of the above instructions may result in the bid being found non-responsive and rejected.

**FAX BID SUBMISSION:** If faxing a bid; send to (907) 269-0872, no later than the date and time listed on page one of this ITB as the deadline for receipt of bids. **It is the bidder's responsibility to contact the issuing office at (907) 269-0867 or 269-0862 to make arrangements prior to faxing the bid and to confirm that the bid has been received.** Failure to follow the above instructions may result in the bid being found non-responsive and rejected.

**4. PRICES:** The bidder shall state prices in the units of issue on this ITB. Prices quoted for commodities must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. Prices quoted for services must be quoted in U.S. funds and include applicable federal duty, brokerage fee, packaging, and transportation cost so that the services can be provided without further cost. Prices quoted in bids must be exclusive of federal, state, and local taxes. If the bidder believes that certain taxes are payable by the State, the bidder may list such taxes separately, directly below the bid price for the affected item. The State is exempt from Federal Excise Tax except the following:

- Coal - Internal Revenue Code of 1986 (IRC), Section 4121 - on the purchase of coal;
- "Gas Guzzler" - IRC, Section 4064 - on the purchase of low m.p.g. automobiles, except that police and other emergency type vehicles are not subject to the tax;
- Air Cargo - IRC, Section 4271 - on the purchase of property transportation services by air;
- Air Passenger - IRC, Section 4261 - on the purchase of passenger transportation services by air carriers.
- Leaking Underground Storage Tank Trust Fund Tax (LUST) - IRC, Section 4081 - on the purchase of Aviation gasoline, Diesel Fuel, Gasoline, and Kerosene.

**5. VENDOR TAX ID NUMBER:** If goods or services procured through this ITB are of a type that is required to be included on a Miscellaneous Tax Statement, as described in the Internal Revenue Code, a valid tax identification number must be provided to the State of Alaska before payment will be made.

**6. FILING A PROTEST:** A bidder may protest the award of a contract or the proposed award of a contract for supplies, services, or professional services. The protest must be filed in writing and include the following information: (1) the name, address, and telephone number of the protester; (2) the signature of the protester or the protester's representative; (3) identification of the contracting agency and the solicitation or contract at issue; (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (5) the form of relief requested. Protests will be treated in accordance with Alaska Statutes (AS) 36.30.560-36.30.610.

**CONDITIONS:**

**1. AUTHORITY:** This ITB is written in accordance with AS 36.30 and 2 AAC 12.

**2. COMPLIANCE:** In the performance of a contract that results from this ITB, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.

**3. SUITABLE MATERIALS, ETC.:** Unless otherwise specified, all materials, supplies or equipment offered by a bidder shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.

**4. SPECIFICATIONS:** Unless otherwise specified in the ITB, product brand names or model numbers specified in this ITB are examples of the type and quality of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describing the item, the specifications govern. Reference to brand name or number does not preclude an offer of a comparable or better product, if full specifications and descriptive literature are provided for the product. Failure to provide such specifications and descriptive literature may be cause for rejection of the offer.

**5. FIRM OFFER:** For the purpose of award, offers made in accordance with this ITB must be good and firm for a period of ninety (90) days from the date of bid opening.

**6. EXTENSION OF PRICES:** In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

**7. BID PREPARATION COSTS:** The State is not liable for any costs incurred by the bidder in bid preparation.

**8. CONSOLIDATION OF AWARDS:** Due to high administrative costs associated with processing of purchase orders, a single low bid of \$50 or less may, at the discretion of the State, be awarded to the next low bidder receiving other awards for consolidation purposes. This paragraph is not subject to the protest terms enumerated in "*INSTRUCTION TO BIDDERS*", "*FILING A PROTEST*" above.

**9. CONTRACT FUNDING:** Bidders are advised that funds are available for the initial purchase and/or the first term of the contract. Payment and performance obligations for succeeding purchases and/or additional terms of the contract are subject to the availability and appropriation of funds.

**10. CONFLICT OF INTEREST:** An officer or employee of the State of Alaska may not seek to acquire, be a party to, or possess a financial interest in, this contract if (1) the officer or employee is an employee of the administrative unit that supervises the award of this contract; or (2) the officer or employee has the power to take or withhold official action so as to affect the award or execution of the contract.

**11. ASSIGNMENT(S):** Assignment of rights, duties, or payments under a contract resulting from this ITB is not permitted unless authorized in writing by the procurement officer of the contracting agency. Bids that are conditioned upon the State's approval of an assignment will be rejected as nonresponsive.

**12. SUBCONTRACTOR(S):** Within five (5) working days of notice from the state, the apparent low bidder must submit a list of the subcontractors that will be used in the performance of the contract. The list must include the name of each subcontractor and the location of the place of business for each subcontractor and evidence of each subcontractor's valid Alaska business license.

**13. FORCE MAJEURE (Impossibility to perform):** The parties to a contract resulting from this ITB are not liable for the consequences of any failure to perform, or default in performing, any of its obligations under the contract, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this ITB, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

**14. LATE BIDS:** Late bids are bids received after the time and date set for receipt of the bids. Late bids will not be accepted.

**15. CONTRACT EXTENSION:** Unless otherwise provided in this ITB, the State and the successful bidder/contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least thirty (30) days before the desired date of cancellation.

**16. DEFAULT:** In case of default by the contractor, for any reason whatsoever, the State of Alaska may procure the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

**17. DISPUTES:** If a contractor has a claim arising in connection with a contract resulting from this ITB that it cannot resolve with the State by mutual agreement, it shall pursue a claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

**18. CONSUMER ELECTRICAL PRODUCT:** AS 45.45.910 requires that "...a person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured after August 14, 1990, unless the product is clearly marked as being listed by an approved third party certification program." Electrical consumer products manufactured before August 14, 1990, must either be clearly marked as being third party certified or be marked with a warning label that complies with AS 45.45.910(e). Even exempted electrical products must be marked with the warning label. By signature on this bid the bidder certifies that the product offered is in compliance with the law. A list of approved third party certifiers, warning labels and additional information is available from: Department of Labor and Workforce Development, Labor Standards & Safety Division, Mechanical Inspection Section, P.O. Box 107020, Anchorage, Alaska 99510-7020, (907)269-4925.

**19. SEVERABILITY:** If any provision of the contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**20. GOVERNING LAW; FORUM SELECTION:** A contract resulting from this ITB is governed by the laws of the State of Alaska. To the extent not otherwise governed by section 17 of these Standard Terms and Conditions, any claim concerning the contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

**SPECIAL CONDITIONS:**

**1. ORDER DOCUMENTS:** Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The State is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the State under this ITB. The State of Alaska Purchase Order, Contract Award and Delivery Order are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.

**2. BILLING INSTRUCTIONS:** Invoices must be billed to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order, not to the Division of General Services. The ordering agency will make payment after it receives the merchandise or service and the invoice. Questions concerning payment must be addressed to the ordering agency.

**3. CONTINUING OBLIGATION OF CONTRACTOR:** Notwithstanding the expiration date of a contract resulting from this ITB, the contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance and parts availability requirements have completely expired.

**PREFERENCES: DO NOT APPLY – FEDERALLY FUNDED**

**ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES:**

When Federal Funds are involved, an Alaska Business License must be obtained prior to the award of a contract.

23 CFR 635.110; "Licensing and qualification of contractors", (c) reads:

*"No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract"*

Prior to contract award the Contractor must hold a valid Alaska business license and any necessary applicable professional licenses required by Alaska Statute. Contractors should contact the Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, P. O. Box 110806, Juneau, Alaska 99811-0806, for information on these licenses.

Website: <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing.aspx>

Phone: (907) 465-2550

Email: [license@alaska.gov](mailto:license@alaska.gov)

**Required Contract Provisions for Federal-Aid Contracts:** This contract incorporates Required Contract Provisions for Federal-Aid (FHWA) Contracts, Form 25D-55 H (02/16), attached to this ITB. The Contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

**CONTRACT FUNDING:**

The funding of the resultant contract will be provided by the U.S. Federal Highways Administration (FHWA). Federal funds are identified and appropriated for the first term of the contract. Payment and performance obligations for additional terms of the contract are subject to the availability and appropriation of funds.

**STATEMENT OF FINANCIAL ASSISTANCE:**

Statement of Financial Assistance: This Procurement is subject in part to financial assistance grants agreement between the State of Alaska and both the U.S. Department of Transportation and the Federal Highway Administration.

**Sec. 36.30.890. Federal Assistance**

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

**2 AAC 12.730. Federal Assistance**

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. Authority: AS 36.30.040; AS 36.30.890

**Reference:**

Alaska Department of Transportation and Public Facilities Standard Specifications for Highway Construction – 2017 Edition

<http://www.dot.state.ak.us/stwddes/dcscsspecs/assets/pdf/hwyspecs/sshc2017.pdf>

**Attachments For Completion and Return With Your Bid:** In order to be responsive, bidders must complete, sign, date and return these forms with their bid:

1. Material Origin Certificate, Form 25D-60
2. Certificate of Buy America Act Compliance Form 25D-62

Failure to return the complete forms with your bid may cause the bid to be deemed non-responsive and rejected.

**Section 106 – Control of Material, Section 106.101 Source of Supply and Quality Requirements****BUY AMERICA PROVISION:**

On projects using federal funds, the Contractor shall comply with the requirements of 23 CFR 635.410, Buy America requirements, and shall submit a completed Material Origin Certificate, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate (Form 25D-60), the Contractor shall submit an updated Material Origin Certificate (Form 25D-60). All steel and iron products which are incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project including freight.

**If the product contains a portion of iron or steel and meets this criteria, the bidder's completion and return of Forms 25D-60 and 25D-62 (above) is required. Bidders must explain on the forms (or as an attachment) how their product meets 23 CFR 635.410, sign and date the forms and submit with their bid.**

"Manufactured in the United States" means all manufacturing processes starting with the initial mixing and melting through the final shaping, welding, and coating processes must be undertaken in the United States. The definition of "manufacturing process" is smelting or any subsequent process that alters the material's physical form, shape or chemical composition. These processes include rolling, extruding, machining, bending, grinding, drilling, etc. The application of coatings, such as epoxy coating, galvanizing, painting or any other coating that protects or enhances the value of steel or iron materials shall also be considered a manufacturing process subject to the requirements of Section 106-1.01, Buy America Provision and of the Buy America Act. Buy America does not apply to raw materials (iron ore), pig iron, and processed, pelletized and reduced iron ore. It also does not apply to temporary steel items (e.g., temporary sheet piling, temporary bridges, steel scaffolding, and falsework). Further, it does not apply to materials which remain in place at the Contractor's convenience (e.g., sheet pilings, and forms).

The North American Free Trade Agreement (NAFTA) does not apply to the Buy America requirement. There is a specific exemption within NAFTA (article 1001) for grant programs such as the Federal-aid highway program.

When steel and iron products manufactured in the United States are shipped to a foreign country where non steel or iron products are installed on or in them (e.g., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this subsection.

The Contractor shall ensure that all manufacturing processes for each covered product comply with this provision. Non-conforming products shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

Provide a Certificate of Buy America Act Compliance Form 25D-62 from the supplier for each steel or iron product and each component that is manufactured predominantly of steel or iron, prior to incorporating any steel or iron products or any components manufactured predominantly of steel or iron into the project. The supplier certifying Form 25D-62 may be the original manufacturer, fabricator, vendor, or subcontractor; provided the supplier has sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 CFR 635.410. Provide mill certificates when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 US Code Section 1001 and 1020.

**BIDDERS WITH DISABILITIES:** The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Division of Supply & Services at one of the following numbers no later than five (5) days to make any necessary arrangements.

Telephone: 269-0862  
Fax: 269-0872  
TDD: 269-0473

**COMPLIANCE WITH ADA:** By signature of their bid the bidder certifies that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.

Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance with 28 CFR Part 35 Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

**CONTRACT PERFORMANCE LOCATION:** By signature on their bid, the bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. If the bidder cannot certify that all work will be performed in the United States, the bidder must contact the procurement officer in writing to request a waiver at least 5 days prior to the deadline for receipt of bids. The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the bid as non-responsive, or cancel the contract.

**HUMAN TRAFFICKING:** By signature on their bid, the bidder certifies that the bidder is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/>

Failure to comply with this requirement will cause the state to reject the bid as non-responsive, or cancel the contract

**CONTRACT INTENT:** This Invitation to Bid (ITB) is intended to result in fixed price, one year contract for the purchase of FHWA Funded traffic paint, paint solvent, and beads to be delivered to various locations for the Alaska Department of Transportation & Public Facilities.

**NOTICE OF INTENT TO AWARD:** After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. This tabulation, called a Notice of Intent to Award, serves two purposes. It lists the name of each company or person that offered a bid and the price they bid. It also provides notice of the state's intent to award a contract(s) to the bidder(s) indicated. A copy of the Notice of Intent will be mailed to each company or person who responded to the ITB. Bidders identified as the apparent low responsive bidders are instructed not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the procurement officer. A company or person who proceeds prior to receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the procurement officer does so without a contract and at their own risk.

**PAYMENT FOR STATE PURCHASES:** Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

**CONTRACT ADMINISTRATION:** The administration of this contract is the responsibility of Dan Trubiano, Procurement Officer (907) 269-0862, Central Region Department of Transportation & Public Facilities.

**SHIPPING DAMAGE:** The state will not accept or pay for damaged goods. The contractor must file all claims against the carrier(s) for damages incurred to items in transit from the point of origin to the ultimate destination. The state will provide the contractor with written notice when damaged goods are received. The state will deduct the cost of the damaged goods from the invoice prior to payment. The contractor must file all claims against the carrier(s) for reimbursement of the loss.

**INDEMNIFICATION:** The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor's work.

**INSURANCE:** Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the procurement officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

**Proof of insurance is required for the following:**

Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the state.

Commercial General Liability Insurance: covering all business premises and operations used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence. Failure to supply satisfactory proof of insurance within the time required will cause the state to declare the bidder non-responsive and to reject the bid.

**BRAND AND MODEL OFFERED:** The bidder's failure to identify the brand and model offered may cause the state to consider the offer non-responsive and reject the bid.

**ANNOTATED LITERATURE:** Bidders must annotate their product literature to identify for the state the location of the supporting information regarding each product specification set out in this ITB. A bidder's failure to comply with this clause, within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

**SUPPORTING INFORMATION:** The state strongly desires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the procurement officer that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the state reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.



**FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER:** Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

**CONTRACT PERIOD:** From date of award through January 31, 2020

**PRICE DECREASES:** During the period of the contract all price decreases experienced by the contractor must be passed on to the state. A contractor's failure to strictly and faithfully adhere to this clause, within the time required, will be considered in breach of contract.

**ALTERATIONS:** The contractor must obtain the written approval from the procurement officer prior to making any alterations to the specifications contained in this ITB. The state will not pay for alterations that are not approved in advance and in writing by the procurement officer.

**DELIVERY:** The "Bid Schedule" identifies a delivery date for the F.O.B. Point. Deliveries shall be made as specified on the Bid Schedule. By signature on page one of the ITB, the bidder guarantees delivery to each location within the timeframe set forth in the Bid Schedule. Deliveries will only be accepted at the final destination during normal State working hours (8am – 4:30pm), Monday through Thursday. Deliveries must be made by open flat-bed trailers ONLY. Drums of paint and palletized beads shall be loaded on the flat bed trailers in single tier ONLY. Any deliveries made to those destinations in enclosed vans will be refused. Any additional costs to re-deliver to meet these requirements shall be the responsibility of the contractor.

**DELIVERY CONFIRMATION:** Bidders must obtain a confirmation from the manufacturer that the items offered are scheduled for production in sufficient time to meet the scheduled delivery dates. A copy of the manufacturer's confirmation may be included with the bid or submitted within 10 days of the state's request. The bidder's failure to provide the manufacturers confirmation as required will cause the state to consider the bid non-responsive and reject the bid.

**ADVANCE NOTICE OF DELIVERY:** The Contractor must contact the State representative to coordinate delivery. Failure to contact the State rep listed in the bid schedule may delay the State's ability to accept the shipment. Deliveries will only be accepted at the final destination **Monday through Thursday, excluding State holidays, 8am to 4:30pm**, unless other prior arrangements are made with the State's designated contact as instructed above. Any deliveries after normal business hours must be pre-approved by the State's designated contact for that destination. However, prior approval to deliver outside normal business hours is not guaranteed due to lack of available personnel or other scheduling conflicts. Any additional costs (personnel and equipment) incurred by the State to accommodate deliveries made outside normal business hours will be solely at the Contractor's expense.

**LIQUIDATED DAMAGES:** Late delivery will cause the state to suffer damages. Actual damages will be difficult to assess; therefore, it is mutually agreed that the contractor will pay the state damages at the rate of \$100 dollars per day for each calendar day beyond the delivery date called for in the ITB.

**BID GUARANTEE:** Bids must be accompanied by a bid guarantee in the form of a Certified or Cashier's check in the amount of **\$10,000** made payable to the State of Alaska. Bonds will not be accepted as a bid guarantee. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond or Individual Surety. If the successful bidder fails to deliver the required Performance Bond or Individual Surety within the time required, the bid guarantee will be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

The Bid Guarantee **may not** be submitted electronically or by fax.

**Failure to submit a bid guarantee in the proper form and amount, by the time set for opening of bids, will cause the State to determine the bid non-responsive and reject the bid.**

**PERFORMANCE BOND:** Any posted performance bonds will ensure performance over the entire term of the contract. In the event it becomes necessary for the State to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly perform and complete all obligations and work under said contract in accordance with the terms of the performance bond. A **performance bond** is to be in the amount of 100 percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

**INDIVIDUAL SURETY:** In lieu of a performance bond, a successful bidder may post an individual surety to ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the individual surety will be declared as liquidated damages and become due and payable to the state. By signature on this ITB, the bidder acknowledges this condition and voluntarily relinquishes any and all claims to the entire individual surety. The individual surety may be in any of the following forms:

- **CERTIFIED OR CASHIER'S CHECK:** A certified or cashier's check, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).
- OR**
- **SPECIAL NOTICE ACCOUNT OR CERTIFICATE OF DEPOSIT:** A special notice account book or certificate of deposit, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

Failure to supply this document within the time required will cause the State to declare the bidder non-responsible and reject the bid.

**ORDERS:** Orders will be placed by the Central Region procurement office in the form of a Purchase Order through the State's Integrated Resource Information System (IRIS):  
<http://doa.alaska.gov/dof/iris/index.html>

**QUANTITIES:** The quantities referenced in this ITB are firm.

Additional small orders may be processed during the duration of the contract on an as needed basis at the same price per gallon offered in response to this ITB. The state will pay actual shipping costs on all additional orders placed throughout the term of the contract.

**F.O.B. POINT:** The F.O.B. point for all items purchased under this contract is the final destination anywhere within the State of Alaska as stated on the Bid Schedule. Ownership of and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the state. All orders shall be F.O.B. Destination.

**PROOF OF DELIVERY RECEIPT:** When shipments are delivered to their final destination, a Proof of Delivery (POD) receipt must be signed by state staff on site at the time of delivery. Each POD must include the following:

- Signature and printed name of the state employee on site at the time of delivery.
- Date of Delivery, description of item to include paint color, container number(s), and total quantity.
- The Contractor's Delivery agent is responsible for ensuring the printed name is legible on the POD.

**SHIPPING CHARGES:** Shipments to all locations for all products types shall be F.O.B. Destination. For the initial orders, the state shall pay the shipping cost per gallon or pound (as appropriate) offered in response to this ITB for each lot and location.

For small additional orders placed during the term of the contract, the state shall pay the actual shipping cost. Invoices submitted for additional orders must include verifiable shipping documents that validate the shipping costs as seen on the invoice.

**INVOICES:** Invoices must be sent directly to the ordering agency's address shown on the individual Purchase Order. The ordering agency will only make payment after it receives the merchandise and the invoice. Question concerning payment must be addressed to the ordering agency.

1. Invoices must clearly identify the Purchase Order, item description, quantity, unit price per gallon or pound, the extended price, and
2. Include a Proof of Delivery (POD) receipt signed by a state employee to include a legible printed name for the state employee accepting the delivery.
3. When invoicing for small additional orders, the invoice must also include a copy of the freight bill for shipping cost validation.

Invoices for partial deliveries will not be accepted. Partial payments will not be made. Invoices must be submitted to the appropriate office.

**THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED:** Because of the additional administrative and accounting time required of state agencies when third party financing agreements are permitted, they will not be allowed under this contract.

**CONTINUING OBLIGATION OF CONTRACTOR:** Regardless of the terms and conditions of any third-party financing agreement, the contractor agrees that none of its responsibilities under this contract are transferable and that the contractor alone will continue to be solely responsible until the expiration date of the contract. Such responsibilities include, but are not limited to, the provision of equipment, training, warranty service, maintenance, parts and the provision of consumable supplies. By signature on the face page of this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this continuing obligation clause.

**PACKAGING:** The cost of all packaging must be included in the price bid. All packaging must meet the specifications listed in the ITB and suitable for shipment and warehouse storage.

**WORKMANSHIP & MATERIALS:** All work must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the service, maintenance and inspections. Service, maintenance and inspections that are improperly done will be done over, by the contractor, at the contractor's risk and expense.

**INSPECTION:** The State reserves the right to inspect those areas of the bidder's place of business that relate to the performance of the contract with or without prior notification.

**CONTRACT CANCELLATION:** The State reserves the right to cancel the contract at its convenience upon thirty (30) calendar day's written notice to the contractor. The State is liable only for payment in accordance with the payment provisions of this contract for services or supplies provided before the effective date of termination.

**METHOD OF AWARD:** Award will be made to the lowest responsive and responsible bidder. In order to be considered responsive, bidders must bid on all items.

**GENERAL PRODUCT STANDARDS****HIGHWAY STANDARDS:**

**APPLICABLE DOCUMENTS:** The following sections of the Alaska DOT&PF Standard Specifications for Highways, 2017 edition are applicable to this project:

- Section 643-2.01-8: Traffic Maintenance – Materials – Interim Pavement Markings;
- Section 670: Traffic Markings;
- Section 708-2.03: Paints – Paint for Traffic Marking;
- Section 712: Miscellaneous, as cited herein; and,
- Section 106-1.05: Certificates of Compliance.

**SECTION 643-2.01, TRAFFIC MAINTENANCE - MATERIALS:** In accordance with this section, the contractor shall provide materials for traffic control devices conforming to the following requirements:

- Per section 643.2.01.8, Traffic Maintenance – Materials - Interim Pavement Markings, the contractor shall apply markings according to Section 670 and the manufacturer's recommendations. Use:
  - a) Paint meeting Subsection 708-2.03 with glass beads meeting Subsection 712-2.08

**SECTION 708-2.03, PAINTS - PAINT FOR TRAFFIC MARKING:** In accordance with this section, the contractor shall use the following:

- Per section 708-2.03.3, Paint for Traffic Marking, the contractor shall use a product that meets “The current State of Alaska DOT&PF maintenance specification for pavement marking paint”.

**SECTION 712-2.08, GLASS BEADS:** In accordance with this section, bidders must submit certifications of compliance as specified in Section 106-1.05 for each lot of glass beads used on the contract.

- Per section 106-1.05, Certificates of Compliance, the contractor shall submit with the bid certifications of compliance that verifies the glass beads contain no more than 200 ppm of lead or 200 ppm of arsenic when tested in accordance with EPA testing methods 3062, 6010B, or 6010C. Glass Beads shall meet AASHTO M 247, Type 1, with a moisture resistant coating when tested in accordance with AASHTO T346.

The Alaska DOT&PF Standard Specifications for Highways, 2017 edition may be found at the following link: <http://www.dot.state.ak.us/stwddes/dcspsecs/index.shtml>

**INDEPENDENT LAB TEST RESULTS:** Bidders must submit with their bid, certified test results performed by independent lab certifying that all products offered are in compliance with the State’s paint and reflective glass bead specifications. The test results submitted must be signed by the independent lab and have the testing must have been performed and certified within 180 days of the date of issuance of this ITB.

Certified test results for each type and color of paint must be submitted. In addition, both airport and highway reflective glass beads must be tested individually. Failure to submit the required certified test results with the bid may cause the State to determine the bid non-responsive and reject the bid.

**PRODUCT SAMPLES:** The contractor is required to submit samples of the products offered for inspection and evaluation to the department or its designated agent, as specified under Product Testing. The contractor's failure to submit the samples may cause the State to consider the contractor in default.

## PRODUCT TESTING

**After award, but prior to shipping,** the Department, or its designated agent, will be given safe access to the plant to inspect and randomly sample all products being offered for shipment. Samples obtained for Quality Assurance purposes will be tested by an independent laboratory for compliance with the State's paint and reflective glass bead specifications.

Product testing shall be arranged by the contractor in cooperation with the states Welding and Coatings Inspection Consultant as identified below.

Testing will be performed by the Alaska DOT&PF's, Welding and Coatings Inspection Consultant Mayes Testing Engineers Inc. Mayes Testing Engineers, Inc. will act as DOT&PF's Agent to randomly select bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified paint testing laboratory for the performance of DOT&PF selected test procedures.

The contractor shall bear all costs associated with quality assurance and independent laboratory acceptance testing of the material and such testing shall be considered subsidiary to the product's unit price.

The Department will reject materials when the samples do not meet product quality specifications. If the product does not pass the acceptance testing, the contractor will have 72 hours to correct the product before shipment.

### Process to Arrange Product Testing:

1. Upon award, the contractor shall contact Mayes Testing Engineers, Inc. by phone to inform them of the contract award and to provide anticipated testing windows. The state Procurement Officer of Record and the DOT&PF Materials Lab must be notified via email that contact has been made with Mayes Testing Engineers, Inc. **This contact must occur within 14 days of contract award.**

Mayes Testing Engineers Inc.  
20225 Cedar Valley Road, Suite 110  
Lynnwood, WA 98036  
425-742-9360

2. Once testing windows are determined, the contractor shall notify the Procurement Officer of Record and the DOT&PF Materials Lab via email of the testing window when sampling will be witnessed by Mayes Testing Engineers, Inc. If testing windows change, the state must be notified of the new testing window.
3. Upon the collection of samples, the contractor shall notify the Procurement Officer of Record and the DOT&PF Materials Lab via email that samples were obtained by Mayes Testing Engineers, Inc. Once samples are taken, Mayes Testing Engineers, Inc. will ensure delivery to the paint testing laboratory for testing.
4. Upon completion of the testing, the independent lab will email copies of the final test results to:  
[daniel.trubiano@alaska.gov](mailto:daniel.trubiano@alaska.gov)

## GENERAL REQUIREMENTS

By signature of their bid the bidder certifies that they comply or shall comply with the following general requirements:

**A. FEDERAL COMPLIANCE:** Throughout the execution of this contract, the Contractor must adhere to the Code of Federal Regulations, Title 49, Part 180.605. <http://ecfr.gpoaccess.gov>

**B. SILENCE OF SPECIFICATION:** The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail, and that only materials and workmanship of first quality are to be used. **ANY** exception to this specification may be cause for rejection of the bid.

**C. MANUFACTURE:** The ingredient materials shall be mixed and ground to produce a homogeneous paint free of foreign material, which will not thicken, liver, gel, curdle, or settle during storage of up to six months from the manufactured date listed on the container. The paint must dry to an elastic adherent finish and show no appreciable discoloration when a thin section is exposed to sunlight. The vendor shall replace any paint which has become unfit for use, either due to leakage of containers or any other reason not due to handling by user.

**D. FORMULATION:** At time of bid opening; the contractor **must furnish the formulation of the paint manufacturer's product** offered in reference to the specifications and no deviation from this formulation will be permitted without authorization from the State of Alaska. Samples of ingredient materials may be required at any time. The manufacturer's formulation will be treated as a confidential matter, and will not be divulged without their consent.

**E. TEST RESULTS:** State decisions as to acceptability shall be considered final.

**F. FRESH PAINT ONLY:** All paint supplied by this contract must be fresh. Paint may not be re-manufacturer, reconditioned or made in part using any components extracted from previous batches. Paint must be clean, bright and mixed no more than 60 days prior to shipment. Containers shall clearly show the date of manufacture on the outside of the drum or tote. Paint received in non-compliance will be refused at the Contractor's expense.

**It is the contractor's responsibility to ensure that each container of paint delivered is compliant to State specifications.** A contractor's failure to comply with this requirement will cause the State to seek remedies under breach of contract.

**G. PROCESS:** The manufacturer shall assume all costs arising from the use of patented materials, equipment, devices or processes used on, or incorporated in the work, and agrees to indemnify and save harmless the Department and its duly authorized agents from suits of law, or actions of any nature for, or on account of the use of any patented materials equipment, devices, or processes.

**H. SUITABILITY:** The paints provided under this contract must be suitable for application using standard or airless traffic painting equipment. All paints provided shall provide durable pavement markings, primarily on asphalt concrete surfaces but are still suitable for Portland cement concrete applications. Provide paints of the fast-dry type, suitable for lowest temperature and highest humidity applications. Submit limitations and recommended storage, equipment and methods of application with Compliance with Specifications under each Specification.

**I. PRODUCT SUPPORT:** Provide email and telephone support for users to contact with any questions or comments about use and storage of the materials provided herein. Respond to all email and telephone inquiries from Alaska DOT&PF personnel within one (1) business day. If at all possible, to help ensure a timely response to DOT&PF inquiries, the contractor should provide personnel living in Alaska for product support inquiries.

**SPECIFICATIONS****SPECIFICATION NUMBER ONE****SOLVENT BASED TRAFFIC MARKING PAINT LOW VOC IN WHITE & YELLOW**

**SPECIFICATION:** All paint provided under this specification must meet the requirements of Federal Specification A-A-2886B, Type II, and be formulated with a minimum of 70% Acrylic Copolymer resins.

**SOLVENT PAINT TESTING PROCEDURES:** The following solvent paint testing procedures shall apply to all paint delivered under Specification Number One.

- The contractor shall submit Federal Specification A-A-2886B, Type II tests on solvent paint formulated within the two years preceding the Invitation to Bid (ITB) issuance date.
- The contractor shall also submit the reduced suite of tests, listed below in Table 1, for paint formulated within the 180 days preceding the ITB issuance date.

All costs associated with laboratory testing are the sole responsibility of the contractor awarded the contract, including the cost of Quality Assurance "Fingerprint" testing on two samples of the paint randomly selected from the Alaska order by the Alaska DOT&PF's Quality Assurance Consultant (see page 13).

Alaska DOT&PF will pay for the consultant, acting as DOT&PF's Agent, to randomly select two (2) bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified independent paint testing laboratory, for the performance of the following three (3) selected test procedures:

**QUALITY ASSURANCE TESTING FOR SOLVENT PAINT:**

1. ASTM D562 Consistency (Viscosity)
2. ASTM E1347 (or E1349) Directional Reflectance of white paint with 45:0 or 0:45 Geometry
3. ASTM D2369 (or D2832) Total Solids, % by Weight

Test results shall be reported by email to the following DOT&PF Staff:

Procurement Specialist  
State Materials Lab

Dan Trubiano  
Richard Giessel

[daniel.trubiano@alaska.gov](mailto:daniel.trubiano@alaska.gov)  
[richard.giessel@alaska.gov](mailto:richard.giessel@alaska.gov)

**COMPOSITIONAL REQUIREMENTS**

- A. **Pigment Composition:** Pigments shall be first quality paint grade pigments. The inert or filler pigments must be of a type and quality generally recognized as first quality paint grade products, and shall not contribute to settling of the paint in storage or be so hard as to cause excessive wear of the spray application equipment.
- B. **Vehicle or Resinous Binder Composition:** The vehicle may be any combination of natural or synthetic resinous materials that are not prohibited per this specification. All resins used must be permanently capable of re-dissolving in the solvent combination used in the paint. Paint and binder combinations shall minimize build-up of the paint on the sides of tanks, paint lines, and clogging of spray equipment from un-dissolvable skins.

<b>SPECIFICATIONS cont.</b>
-----------------------------

**TABLE 1 SOLVENT PAINT****Primary Quantitative Requirements**

CHARACTERISTIC	MINIMUM	MAXIMUM	TEST METHOD
Viscosity @ 77°F (25°C), Krebs units	75	90	ASTM D562
Weight (lb) per Gallon at 77°F (25°C)	11.0		ASTM D1475
Fineness of Grind, Hegman	2		ASTM D1210
Drying time for no-pick-up, Minutes	---	5	ASTM D711
Contrast Ratio @ 5 mils DFT, White and Colors (Black)	0.95 (1.0)	---	See "H" below
Colors: Yellow 33538; White: 37925; or approved equals	Pass		FED-STD-595C
Directional reflectance of white paint applied at 15 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	85	---	ASTM E1347
Directional reflectance of yellow paint applied at 15 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	45	---	ASTM E1347
Volatile Organic Compounds (VOC), grams/liter (lbs./gallon)		150 (1.25)	EPA 40, CFR Part 59, ASTM D3960
Total Solids, % by Weight	70		ASTM D2369
Total Solids, % by Volume	43		ASTM D2697

- C. **Prohibited Materials:** The bidder must submit documentation with their bid certifying the product does not contain mercury, lead, hexavalent chromium, halogenated solvents (such as Methylene Chloride), or any carcinogen, as defined in 29 CFR 1910.1200.
- D. **Application and Storage:** Follow Manufacturer's recommended equipment, temperatures, humidity and any other limits for safe and proper application, use, as well as storage of these materials and containers.
- E. **Condition in Container:** For a minimum of one year from the date of manufacture, the paint must meet each of the following conditions:
- (1) Not show excessive settling in a freshly opened full can
  - (2) Show no curdling, livering, caking, lumps, skins, or color separation
  - (3) Be easily re-dispersed when mixed with a paddle
  - (4) Be easily re-dispersed after 5 minutes of mechanical shaking using a standard commercial paint shaker
  - (5) Water Resistance: Guaranteed water resistant when applied properly.
- F. **Weathering:** Guaranteed against cracking and weathering under extreme conditions when applied properly.
- F. **Storage Stability:**
- (1) The material must not show evidence of heavy caking or settling which requires mechanical means to return the product to usable condition for a period of one year from the date received by the State of Alaska.



**SPECIFICATIONS cont.**

- (2) There must be no viscosity increase of 5 Krebs Units over the originally reported viscosity after aging in the container or decomposition of the product. Field examination of previously unopened containers must not disclose evidence of un-dissolvable gelatinous vehicle separation, heavy skin formation, or corrosion of the container of batches in storage one year or less. Containers stored under adverse conditions such as uncovered areas unprotected from the elements must show no evidence of the above conditions over a period of 6 months from date of shipment from manufacturer.

**G. Application Temperature:** The manufacturer's recommended minimum application temperature (air, surface and material) must be 40° Fahrenheit or lower.

**H. Dry opacity for both Solvent and Waterborne Paints:** (Note: This procedure is derived from Section 4121 of Federal Standard 141.) On a black/white Leneta chart, Form 2A Opacity, draw down a film of the sample covering both black and white portions of the chart. Use an appropriate gap draw-down blade that will produce a 5 mil Dry Film Thickness (DFT).

Dry the specimen 24 hours at 25°C. Use a suitably calibrated filter photometer, conforming to ASTM Designation: E 1347, to measure alternately the 45°/0° daylight luminous directional reflectance (Y) of the specimen over the white and black portions of the chart. Calculate dry opacity as follows:

Dry Opacity = Reflectance over black / Reflectance over white. (Example: Dry Opacity = 82% ÷ 85% = 0.965).

ASTM D2805 is an acceptable alternative for the specified Dry Opacity test in Section H. When ASTM D2805 is used the Contrast Ratio required must be a minimum of 0.95 for White and Yellow. The thickness requirement is changed to 5 mils Dry Film thickness (DFT).

**SOLVENT BASE PAINT PACKAGING:** Where specified, solvent based materials shall be supplied in either:

1. **345-GALLON STEEL ROUND REUSABLE AND RETURNABLE BULK CONTAINER WITH A 48" X 48" SQUARE BOTTOM**

**When specified on the bid schedule,** the Solvent Based Paint materials shall be supplied in new or clean reconditioned, 345-gallon round reusable and returnable bulk steel containers with a 48" x 48" square bottom that comply with all applicable DOT, EPA OSHA or other Federal and State requirements.

The containers shall be sized to safely contain for transport and use in Alaska 345 gallons of solvent based paint. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with a new gasket of at least 16 inches in diameter. The container shall have vents designed to prevent rain water from entering the vents and seeping inside the containers. The bottom of the containers shall be fitted for forklift pickup from all four sides.

In order to ensure the container fits existing DOT&PF equipment, the contractor must supply the specific sized and shape of returnable steel containers as noted in the Bid Schedule.

Specific requirements include a specific sized round shaped container with a square bottom dimension of 48" x 48".

All paint furnished shall be shipped in containers that clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments.

Any paint or container received with debris or obvious contamination will be returned to the contractor.

**SPECIFICATIONS cont.****2. 345-GALLON STEEL SQUARE REUSABLE AND RETURNABLE BULK CONTAINER**

**When specified on the bid schedule**, the Solvent Based Paint shall be supplied in new or clean reconditioned, 345-gallon square bulk steel containers that comply with all applicable DOT, EPA OSHA or other Federal and State requirements.

The containers shall be sized to safely contain for transport and use in Alaska 345 gallons of paint. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with a new gasket of at least 16 inches in diameter. The container shall have vents designed to prevent rain water from entering the vents and seeping inside the containers. The bottom of the containers shall be fitted for forklift pickup from all four sides.

In order to ensure the container fits existing DOT&PF equipment, the contractor will supply the specific sized returnable steel containers as noted in the Bid Schedule.

Specific requirements include square shaped containers.

All paint furnished shall be shipped in containers that clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments. Any paint or container received with debris or obvious contamination will be returned to the contractor.

**SOLVENT BASE PAINT PACKAGE MARKING:** Each container shall be labeled or stenciled to show the following information (abbreviations may be used):

1. Specification Number One
2. Color (letters minimum 3" high on 55 gallon and larger containers)
3. Batch Number
4. Date of Manufacture
5. Quantity in Container
6. Container ID number (letters minimum 3" high on 55 gallon and larger containers)
7. Manufacturer's Name and Address
8. Information and Warnings as may be required by Federal and State Laws
9. Tare Weight of Empty Container

In addition to the above, each container or barrel must be labeled or stenciled to clearly identify the contents. **Example:** SOLVENT BASED PAINT

**RETURN OF SOLVENT BASE PAINT BULK CONTAINERS:** The bid price submitted must include the cost to return the "returnable" solvent based paint containers from the final destination. The following applies:

1. The State will ship returnable containers, freight collect, per instructions provided by the contractor.
2. Partial to full containers may be held by the State for up to (27) months with no additional cost to the State.
3. The State reserves the right to relocate the bulk containers for use at other regional destinations. However, any additional charges related to relocation shall be the State's responsibility.
4. The State may request a container be shipped from a location other than the containers original destination only after the State has negotiated additional shipping costs, if any, with the contractor.
5. If a container is lost or damaged beyond repair while in the possession of the State, the State shall reimburse the contractor the replacement cost.

Bidders shall indicate on the Bidder Questionnaire, the State's cost to replace lost or damaged containers. A Bidders failure to identify the replacement cost on the Bidder Questionnaire, Attachment C will be construed by the State as there is "no cost" to the state for the replacement container.

**SPECIFICATIONS cont.****COMPLIANCE TO SPECIFICATIONS NUMBER ONE:**

**For Specification Number One,** Bidders must submit the following with their bid in order to be considered responsive:

For ease of review, the following should be provided in a single standalone set of documents.

- (1) Cover sheet indicating the Bidder, ITB number, and the Specification Number;
- (2) Certified test reports of all colors of solvent based paint from an independent laboratory (performed within 180 days of bid opening) confirming compliance with bid specifications;
- (3) Manufacturer's recommended coating for solvent based marking paint adhesion to glass beads;
- (4) Material Safety Data Sheets for each formulation;
- (5) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all paint product(s) submitted for bid are compliant with these specifications.
- (6) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all drums and containers submitted for bid are compliant with these specifications.
- (7) Manufacturer's recommended equipment, temperatures, humidity and any other limits for safe and proper application, use, as well as storage of these materials and containers.
- (8) Product Support Contact: name, address, email and telephone number(s).

**END OF SPECIFICATION ONE****SPECIFICATION NUMBER TWO****TRAFFIC PAINT SOLVENT**

**SPECIFICATION:** All Traffic Paint Solvent shall be the traffic paint manufacturers recommended solvent for use in cleaning State painting equipment to ensure total compatibility between the solvent and paint and shall provide total paint performance per the paint specifications.

**TRAFFIC PAINT SOLVENT PACKAGING:** When specified on the bid schedule, solvent materials shall be supplied in:

**1. 55-GALLON NON-RETURNABLE AND DISPOSABLE STEEL DRUM**

**When specified on the bid schedule,** the solvent shall be supplied in new or reconditioned 55-gallon, pressure-tested, removable-lid steel drums that conform to all applicable DOT, EPA OSHA or other Federal requirements. All Solvent furnished shall be shipped in clean, open head drums. One end of the drum shall have a completely detachable head.

The heads shall be of uniform size and type, so that the recessed part of the head will make contact with the top edge of drum over the entire circumference. The head shall be securely fastened to the top of the drum by means of a lever ring lock or by ring lock with bolt fastener. The hardware shall be galvanized or of non-corrosive metal. The assembly shall be coated with a lubricant to further protect from corrosion and facilitate easy removal.

Drums must have new gaskets to ensure an airtight seal. **Drums of solvent are to be shipped single tier only.** Solvent packaging must be suitable for the contents and must meet all applicable safety and transportation requirements.

**SPECIFICATIONS cont.**

**TRAFFIC PAINT SOLVENT PACKAGE MARKING:** Each container shall be labeled or stenciled to show the following information (abbreviations may be used):

- (a) Specification Number Two
- (b) Color (letters minimum 3" high on 55 gallon drums)
- (c) Batch Number
- (d) Date of Manufacture
- (e) Quantity in Container
- (f) Container ID number (letters minimum 3" high on 55 gallon and larger containers)
- (g) Manufacturer's Name and Address
- (h) Information and Warnings as may be required by Federal and State Laws
- (i) Tare Weight of Empty Container

In addition, each container shall also be labeled or stenciled to clearly identify the contents.

**Example:** PAINT SOLVENT

**PROHIBITED MATERIALS:** The bidder **must submit documentation** with their bid certifying that the Traffic Paint Solvent does not contain mercury, lead, hexavalent chromium, halogenated solvents (such as Methylene Chloride), or any carcinogen, as defined in 29 CFR 1910.1200.

**END OF SPECIFICATION TWO****SPECIFICATION NUMBER THREE****REFLECTIVE GLASS BEADS FOR HIGHWAYS**

**SPECIFICATION:** This specification covers glass beads to be dropped or sprayed upon pavement markings so as to produce a reflectorized pavement marking. Use glass bead coatings that provide a moisture resistant coating to prevent clumping. Glass beads shall also be treated with adhesion promoting and/or flotation coatings for each bead and paint combination as specified by the manufacturer of the paint. Ensure that beads conform to the heavy metal toxicity limits of EPA 40 CFR 261.24. **HIGHWAY BEADS: Meet AASHTO M 247, Type I**

**REFLECTIVE GLASS BEAD FOR HIGHWAYS:** When specified on the bid schedule, reflective glass beads shall be supplied in: BULK CONTAINER BAGS 2,000 – 2400 LBS

The glass beads will be shipped in new or reconditioned polypropylene bags with the following features:

1. 6 oz. weave material;
2. fully opened closure skirt on top;
3. 20" discharge chute on bottom with block on spout – 2 cm wide to PP woven tie;
4. 4 top-lift loops of adequate length to allow lifting by a control hook when full;
5. 40" X 40" X 88" – 2.5 mil. polyethylene inner liner assembled to prevent liner from slipping and clogging chute during discharge;
6. bags shall be secured to standard wooden 42" x 42" non-returnable type pallet; full coverage with pallet jack accessible bottom - 2" max gap; pallets must be of appropriate strength to prevent bags from sagging through the top deck;
7. pallets shall be shrink wrapped with plastic of minimum thickness of 5 mils for protection and to prevent water seepage; and,
8. at time of delivery, all pallet loads must be straight and stable, suitable for reshipping without further adjustments.

**SPECIFICATIONS cont.**

All bulk 2,000-2,400 lb. bags supplied by this contract must be new and delivered dry and undamaged. Open, torn or ripped bags shall be rejected. Rejected bags and replacement product shall be at the contractor's expense. All bags shall be non-returnable and become the property of the State upon receipt and acceptance at the final destination.

**REFLECTIVE GLASS BEAD BAG MARKING:** Each bag shall be labeled to show the following (abbreviations may be used):

- 1) Name: Reflective Glass Beads, Highway
- 2) Specification Number Three and AASHTO M 247, Type I,
- 3) Batch Number
- 4) Date of Manufacturer;
- 5) Net Quantity in Container(s)
- 6) MSDS and any other information and/or warnings as may be required by Federal and State Laws
- 7) Manufacturer's Name and Address

**COMPLIANCE TO SPECIFICATION NUMBER THREE**

**For Specification Number Three**, bidders must submit the following with their bid in order to be considered responsive:

For ease of review, the following should be provided as a single standalone set of documents.

- (1) Cover sheet indicating the bidder, ITB number, and the Specification Number;
- (2) Certified test reports for highway reflective glass beads from an independent laboratory (performed within 180 days of bid opening) confirming compliance with bid specifications for highway glass beads;
- (3) Material Safety Data Sheets for highway glass beads
- (4) Statement of Compliance signed by authorized representative of the firm verifying that bead coatings used for the solvent based and waterborne traffic paints meet the paint manufacturer's recommendations.
- (5) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder indicating all products submitted for bid are compliant with these specifications
- (6) Notarized Affidavit of Compliance signed by authorized representative of both the manufacturer and the bidder, indicating all containers submitted for bid are compliant with these specifications
- (7) Manufacturer's recommended equipment and any other limits for safe and proper application, use, as well as storage of these materials and containers
- (8) Product Support point of contact to include the contact name, address, email and telephone number(s)

Materials and containers used in this contract on the basis of a manufacturer's certificate of compliance may be tested at any time, whether in place or not. If the materials or containers are found to not meet contract specifications, they may be rejected and ordered removed and replaced with acceptable materials at no extra charge to the State.

**END OF SPECIFICATION THREE**

**SPECIFICATIONS cont.****Detailed Shipping Manifest Required Prior to Delivery:**

The Contractor must submit a detailed shipping manifest to the Procurement Officer prior to each shipment. Failure to provide the manifest in advance of delivery may result in refusal of the shipment at the F.O.B. destination.

Manifests must be identified by the following:

1. Contract No. **2519C018-F**
2. F.O.B. Point(s)
3. State's Purchase Order
4. Container ID number
5. Color of Paint
6. Size of Container
7. Sailing date (or indicate if shipment is pending)

Weekly, until all orders have been scheduled for shipment, the contractor must update manifests and submit electronically to the Procurement Officer at: [daniel.trubiano@alaska.gov](mailto:daniel.trubiano@alaska.gov)

**Example of Shipping Manifest:****CA 2519C018-F****Date Submitted: 3/23/2019**

<b>F.O.B.</b>	<b>State's Purchase Order #</b>	<b>Container # or PS = Pending Shipment</b>	<b>Paint Color</b>	<b>Container Size</b>	<b>Sailing Date or PS = Pending Shipment</b>
ANCHORAGE	170004519	5555	W	345 gal.	3/27/2019
ANCHORAGE	170004519	29305	W	345 gal.	3/27/2019
SOLDOTNA	170004522	7908	Y	345 gal.	3/27/2019
PALMER	170004534	4346	W	345 gal.	3/27/2019
PALMER	170004555	PS	Y	345 gal.	PS

**REPORTING, TRACKING AND INVENTORY OF BULK STEEL CONTAINERS**

This section applies to the Bulk Steel returnable containers only.

Reporting, tracking and inventory of bulk steel containers is required for northbound and southbound shipments for the purpose of ensuring each container is returned to the contractor per the terms of the contract.

**Relocation of Steel Containers:**

If the State exercises its right to relocate a returnable container from the original shipped-to destination, the location of the container must be reported to the Contractor on a Tote Relocation Form. The form is available from the State or the Contractor may propose an alternate version of the form for prior approval by the Procurement Officer.

**Return of Steel Containers:**

The return of the containers shall proceed as follows:

1. Airport & maintenance station personnel shall provide notice to the Contractor and identify the container number(s) for return.
2. The Contractor shall provide instructions and a written Return Authorization (RA) number that identifies all containers being returned under that RA.

<b>SPECIFICATIONS (cont.)</b>
-------------------------------

**Inventory:**

The Contractor must maintain a current inventory of all bulk Steel containers shipped and returned by the State under this contract. Upon the State's written request, the Contractor must submit the most current inventory within 20 business days.

**Example of Contractor's Inventory:**

CA 2519C018-F

Date: 9/19/2019

F.O.B.	State's Purchase Order #	Container # PS = Pending Shipment	Paint Color	Container Size	Sailing Date PS = Pending Shipment	Relocate to /TRA #	Return to FOB/ TRA #	RA No.	Date Rec'd
ANCH.	170004519	5555	W	345 gal.	3/27/2019	FIA/173	174	159	11/14/19
ANCH.	170004519	29305	W	345 gal.	3/27/2019			7644	11/22/19
SOLD.	170004522	7908	Y	345 gal.	3/27/2019			65221	12/17/19
PALM.	170004534	4346	W	345 gal.	3/27/2019			3255	12/22/19

## REQUIRED DOCUMENTS

**A BIDDER'S FAILURE TO COMPLY WITH THE FOLLOWING WITHIN THE TIME SET BY THE STATE, MAY CAUSE THE STATE TO CONSIDER THE BIDDER NON-RESPONSIVE**

**DOCUMENTS REQUIRED AT TIME OF BID OPENING:**

- 1) Complete & Sign Page 1 Of The ITB
- 2) All Mandatory Return Amendments (If applicable)
- 3) Bid Guaranteed (page 9)
- 4) Complete Bid Schedule (pages 24-26)
- 5) Certified Independent Lab Tests (page 12)
- 6) Prohibited Materials Certification Solvent Base Paint (page 16)
- 7) Prohibited Materials Certification Paint Solvent (page 20)
- 8) Compliance To Specifications No. 1 (page 19)
- 9) Compliance To Specifications No. 3 (page 21)
- 10) Paint Formulation in accordance with General Requirement item D (page 14)
- 11) Completed signed copy of attached Forms 25D-60 and 25D-62 (see pg. 5 for instructions)

**DOCUMENTS REQUIRED UPON CONTRACT AWARD:**

- 1) Alaska Business License (page 5)
- 2) Proof of Insurance (page 8)
- 3) Performance Bond or Individual Surety (page 10)

**BID SCHEDULE****RETURN OF BULK STEEL CONTAINERS:**

The State shall acquire the return authorization number and return instructions from the Contractor at the following:

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

*Failure to provide this information may cause the State to declare the bid non-responsive and reject the bid.*

**BIDDER'S INFORMATION:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Phone Number

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

\_\_\_\_\_  
EMAIL Address



# **BID SCHEDULE** **Federally (FHWA) Funded**

**FHWA FUNDED**

F.O.B. Anchorage, 5300 East Tudor Road, Anchorage, AK 99507

**DELIVERY IS REQUIRED NO LATER THAN MAY 1, 2019**

Contact: Terry Quantrille PH: (907) 338-1475 Cell: (907) 440-8451

Email: terry.quantrille@alaska.gov

Item #	Description	Container Size	Quantity (Gallons)	x Price per Gallon	+ Freight Price per Gallon	Total Extended Price
1	White Traffic Paint (Spec. 1)	345gal. <b>Round</b> Steel Returnable Container	7,935	\$	\$	\$
2	Yellow Traffic Paint (Spec. 1)	345gal. <b>Round</b> Steel Returnable Container	7,245	\$	\$	\$
3	Paint Solvent (Spec. 2)	55 gal. Drum	165	\$	\$	\$

Item #	Description	Bag Size	Quantity (Pounds)	x Price per lb.	+ Freight Price per lb.	Total Extended Price
4	Marking Beads, <b>HWY</b> (Spec. 3)	2000 to 2400 lb. Bulk Bag	67,200	\$	\$	\$

Indicate size of bag offered for Marking Beads: \_\_\_\_\_/lbs.

**Total Extended Price (Items 1-4):**

\$

F.O.B. Palmer Maintenance Station, 289 Inner Springer Loop Rd., Palmer, Alaska 99645

**DELIVERY IS REQUIRED NO LATER THAN APRIL 15, 2019**

Contact: Galen McIver PH: (907) 745-2159 Cell: (907) 355-6536

Email: galen.mciver@alaska.gov

Item #	Description	Container Size	Quantity (Gallons)	x Price per Gallon	+ Freight Price per Gallon	Total Extended Price
5	White Traffic Paint (Spec. 1)	345gal. <b>Rd or Sq</b> Steel Returnable Container	13,110	\$	\$	\$
6	Yellow Traffic Paint (Spec. 1)	345gal. <b>Rd or Sq</b> Steel Returnable Container	11,730	\$	\$	\$

Item #	Description	Bag Size	Quantity (Pounds)	x Price per lb.	+ Freight Price per lb.	Total Extended Price
7	Marking Beads, <b>HWY</b> (Spec. 3)	2000 to 2400 lb. Bulk Bag	91,200	\$	\$	\$

Indicate size of bag offered for Marking Beads: \_\_\_\_\_/lbs.

**Total Extended Price (Items 5-7):**

\$

# **BID SCHEDULE** **Federally (FHWA) Funded**

F.O.B. Soldotna Maintenance Station, 46445 Sterling Hwy., Soldotna, Alaska 99669  
 DELIVERY IS REQUIRED NO LATER THAN MAY 1, 2019

Contact: Jeffrey Mahan PH: (907) 262-2199 Cell: (907) 398-7988  
 Email: brian.gabriel@alaska.gov

Item #	Description	Container Size	Quantity (Gallons)	x Price per Gallon	+ Freight Price per Gallon	Total Extended Price
8	White Traffic Paint (Spec. 1)	345gal. <b>Square</b> Steel Returnable Container	8,970	\$	\$	\$
9	Yellow Traffic Paint (Spec. 1)	345gal. <b>Square</b> Steel Returnable Container	4,140	\$	\$	\$
10	Paint Solvent (Spec. 2)	55 gal. Drum	220	\$	\$	\$

Item #	Description	Bag Size	Quantity (Pounds)	x Price per lb.	+ Freight Price per lb.	Total Extended Price
11	Marking Beads, <b>HWY</b> (Spec. 3)	2000 to 2400 lb. Super Sack Bag	86,400	\$	\$	\$

Indicate size of bag offered for Marking Beads: \_\_\_\_\_/lbs.

Total Extended Price (Items 8-11):

\$

- 12 Cost to the State to replace a lost or damaged Steel container: \$ \_\_\_\_\_  
 (Failure to provide this information shall be construed by the State as "no cost")

**ITEMS 1-12 GRAND TOTAL EXTENDED PRICES:**

\$

**PAINT** Manufacturers/Suppliers/Brands: \_\_\_\_\_  
 (The bidder's failure to provide this information may cause the bid to be rejected as non-responsive.)

**BEADS** Manufacturers/Suppliers/Brands: \_\_\_\_\_  
 (The bidder's failure to provide this information may cause the bid to be rejected as non-responsive.)

**SOLVENT** Manufacturers/Suppliers/Brands: \_\_\_\_\_  
 (The bidder's failure to provide this information may cause the bid to be rejected as non-responsive.)



## MATERIAL ORIGIN CERTIFICATE

Federal-Aid Highway Contracts

Project Name and Number: \_\_\_\_\_

FOREIGN MANUFACTURED PRODUCTS <sup>1</sup>	COUNTRY OF ORIGIN	COST <sup>2</sup>

I certify under penalty of law that all steel and iron products to be furnished for this project are manufactured in the United States, and comply with the requirements of 23 CFR 635.410 and Contract subsection 106-1.01, Buy America Provisions; except for those foreign manufactured products that are listed on this page or on a separate and clearly identified attachment.<sup>3</sup> The term “manufactured in the United States” is defined in Contract subsection 106-1.01, Buy America Provision.

I certify that I have knowledge that submitting false statements and/or information may result in civil and criminal penalties.

\_\_\_\_\_  
Authorized Corporate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Contractor's Company Name

\_\_\_\_\_  
Position Title

Form 25D-60 Instructions:

1. Enter "NONE" on the first line if there are no exceptions.
2. Invoice cost for foreign manufactured products as delivered to the project including freight.
3. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate, the Contractor shall submit an updated Material Origin Certificate. The Department of Transportation and Public Facilities shall not accept or approve any Material Origin Certificate over the limit specified in the contract.
4. Attach additional complete form sheets if necessary to include more than one page of products.



## Certificate of Buy America Act Compliance

Federal-Aid Highway Contracts

### PART 1:

Project Name and Number	
Supplier Company Name	
Supplied to: Contractor or Subcontractor Company Name	
Materials: Bid Item No. / Bid Item Description	Quantity
Description of Material Manufactured in United States:	

### PART 2: IF MATERIAL IS NOT COMPLIANT WITH BUY AMERICA THAN FILL OUT THE TWO BOXES BELOW:

Description of foreign-made materials and the Country of Origin:
The Cost for the foreign-made materials (invoice cost for foreign manufactured products as delivered to the project including freight):

I certify under penalty of law that the steel or iron product identified on Part 1 of this form is manufactured in the United States, and complies with the requirements of 23 CFR 635.410 and Contract subsection 106-1.01, Buy America Provision. The steel or iron product identified on Part 2 of this form or an attachment is a foreign manufactured product. The term "Manufactured in the United States" is defined in Contract subsection 106-1.01, Buy America Provision. The qualification of who may make this certification is included in Contract subsection 106-1.01, Buy America Provision.

I certify that I have knowledge that submitting false statements and/or information may result in civil and criminal penalties.

\_\_\_\_\_  
Authorized Corporate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Supplier's Company Name

\_\_\_\_\_  
Position Title



STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
**REQUIRED CONTRACT PROVISIONS**  
**for**  
**FEDERAL-AID (FHWA) CONTRACTS**

FHWA-1273 -- Revised May 1, 2012  
Supplement , Cargo Preference Act – Effective February 15, 2016

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27)

and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of

employees by means of meetings, employee handbooks, or other appropriate means.

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

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

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

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

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

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

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

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

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

**6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should



represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

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

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

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

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

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

#### 1. Minimum wages

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

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

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for

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

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

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

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

## **2. Withholding**

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

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

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

the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed,

as specified in the applicable wage determination incorporated into the contract.

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

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

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

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

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

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

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

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

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

##### **b. Trainees (programs of the USDOL).**

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

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

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

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

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

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

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

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

**10. Certification of eligibility.**

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

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

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

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

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

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

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

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**SUPPLEMENT to Form FHWA -1273**  
**CARGO PREFERENCE ACT REQUIREMENTS**

This provision requires compliance with the Cargo Preference Act (CPA) and its implementing regulations in 46 CFR 381 for all Federal Aid Projects awarded after February 15, 2016.

In accordance with 46 CFR 381.7, the following language must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of 46 CFR 381.7 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.

(a) Agreement Clauses. Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) 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)(1) of this section shall be furnished 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."

(b) Contractor and Subcontractor Clauses. Use of United States-flag vessels: The contractor 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.

(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 Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."