

STATE OF ALASKA INVITATION TO BID (ITB)



CRUSHED AGGREGATE - E-1- GALENA AIRPORT – FEDERALLY FUNDED ITB 2524N088

ISSUED APRIL 9, 2024

PROVIDE AND STOCKPILE CRUSHED AGGREGATE TO THE GALENA AIRPORT

IMPORTANT NOTICE: If you received this solicitation from the State of Alaska’s “Online Public Notice” web site, you must register with the procurement officer listed below if you desire to receive notification of subsequent amendments to the solicitation.

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

DEPARTMENT OF TRANSPORTATION	
DIVISION OF MAINTENANCE & OPERATIONS	COMPANY SUBMITTING BID
	AUTHORIZED SIGNATURE
PROCUREMENT OFFICER:	PRINTED NAME
Cathy Norum	DATE
PHONE: (907) 451-2221	
EMAIL: cathy.norum@alaska.gov	

TABLE OF CONTENTS

SECTION 1. INTRODUCTION & INSTRUCTIONS.....	4
SEC. 1.01 PURPOSE OF THE ITB.....	4
SEC. 1.02 BUDGET.....	4
SEC. 1.03 DEADLINE FOR RECEIPT OF BIDS	4
SEC. 1.04 PRIOR EXPERIENCE	4
SEC. 1.05 REQUIRED REVIEW	4
SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS.....	4
SEC. 1.07 RETURN INSTRUCTIONS.....	4
SEC. 1.08 ASSISTANCE TO BIDDERS WITH A DISABILITY	5
SEC. 1.09 AMENDMENTS TO BIDS.....	5
SEC. 1.10 AMENDMENTS TO THE ITB.....	5
SEC. 1.11 ITB SCHEDULE	5
SEC. 1.12 ALTERNATE BIDS.....	6
SEC. 1.13 SUPPORTING INFORMATION	6
SEC. 1.14 FIRM, UNQUALIFIED, AND UNCONDITIONAL OFFER.....	6
SECTION 2. SCOPE OF WORK AND CONTRACT INFORMATION.....	7
SEC. 2.01 SPECIFICATIONS	7
SEC. 2.02 SCOPE OF WORK	7
SEC. 2.03 CONTRACT TERM.....	7
SEC. 2.04 CONTRACT TYPE	7
SEC. 2.05 PAYMENT FOR STATE PURCHASES.....	7
SEC. 2.06 PROMPT PAYMENT FOR STATE PURCHASES.....	7
SEC. 2.07 CONTRACT ADMINISTRATION.....	7
SEC. 2.08 CONTRACT PRICE.....	7
SEC. 2.09 CONTRACT PERFORMANCE LOCATION	7
SEC. 2.10 SUBCONTRACTORS	7
SEC. 2.11 JOINT VENTURES	8
SEC. 2.12 RIGHT TO INSPECT PLACE OF BUSINESS.....	8
SEC. 2.13 F.O.B. POINT	8
SEC. 2.14 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES	8
SEC. 2.15 DELIVERY TIME	8
SEC. 2.16 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS.....	8
SEC. 2.17 CONTINUING OBLIGATION OF CONTRACTOR.....	8
SEC. 2.18 BILLING INSTRUCTIONS	9
SEC. 2.19 ESTIMATED QUANTITIES.....	9
SEC. 2.20 NONDISCLOSURE AND CONFIDENTIALITY	9
SEC. 2.21 INDEMNIFICATION.....	10
SEC. 2.22 INSURANCE.....	10
SECTION 3. BID FORMAT AND CONTENT	11
SEC. 3.01 BID FORMS.....	11
SEC. 3.02 BID BOND – PERFORMANCE BOND – SURETY DEPOSIT	11
SEC. 3.03 PRICES	12
SECTION 4. EVALUATION AND CONTRACTOR SELECTION	13
SEC. 4.01 EVALUATION OF BIDS.....	13
SEC. 4.02 EXTENSION OF PRICES	13

SEC. 4.03	METHOD OF AWARD	13
SEC. 4.04	CONTRACTOR SELECTION PROCESS.....	13
SEC. 4.05	NOTICE OF INTENT TO AWARD	13
SECTION 5.	GENERAL PROCESS AND LEGAL INFORMATION	14
SEC. 5.01	INFORMAL DEBRIEFING	14
SEC. 5.02	ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES	14
SEC. 5.03	AUTHORITY	14
SEC. 5.04	COMPLIANCE	15
SEC. 5.05	SUITABLE MATERIALS, ETC.	15
SEC. 5.06	WORKMANSHIP AND MATERIALS	15
SEC. 5.07	CONTRACTOR SITE INSPECTION.....	15
SEC. 5.08	ORDER DOCUMENTS	15
SEC. 5.09	HUMAN TRAFFICKING.....	15
SEC. 5.10	RIGHT OF REJECTION	16
SEC. 5.11	STATE NOT RESPONSIBLE FOR PREPARATION COSTS.....	16
SEC. 5.12	DISCLOSURE OF BID CONTENTS	16
SEC. 5.13	FORCE MAJEURE (IMPOSSIBILITY TO PERFORM).....	17
SEC. 5.14	DEFAULT	17
SEC. 5.15	DISPUTES	17
SEC. 5.16	SEVERABILITY	17
SEC. 5.17	CONTRACT CANCELLATION.....	17
SEC. 5.18	GOVERNING LAW; FORUM SELECTION	17
SEC. 5.19	QUALIFIED BIDDERS	18
SEC. 5.20	FEDERALLY IMPOSED TARIFFS	18
SEC. 5.21	PROTEST	19
SECTION 6.	ATTACHMENTS	20
SEC. 6.01	ATTACHMENTS	20

SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE ITB

The Department of Transportation & Public Facilities, Division of Maintenance and Operations (M&O), is soliciting bids for the purchase of Crushed Aggregate, E-1, To be stockpiled at the Galena airport

SEC. 1.02 BUDGET

Department of **Transportation**, Division of **Maintenance and Operations** estimates a budget of between **\$280,000.000** and **\$470,000.00** for this contract. Bids priced at more than **\$550,000.00** Will be considered non-responsive

Payment for the contract is subject to funds already appropriated and identified.

SEC. 1.03 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **10:00 AM** Alaska Time on **April 23rd, 2024**, at which time they will be publicly opened. Late bids or amendments will be considered non-responsive and will not be opened or accepted for evaluation.

SEC. 1.04 PRIOR EXPERIENCE

No specific minimums have been set for this ITB.

SEC. 1.05 REQUIRED REVIEW

Bidders shall carefully review this ITB for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material in the ITB should be made in writing and received by the procurement officer prior to the deadline for receipt of bids. 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.

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing. Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the ITB. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the ITB. The procurement officer will make that decision.

SEC. 1.07 RETURN INSTRUCTIONS

Bidders must submit one hard copy of their entire bid, in writing, to the procurement officer in a sealed package. The sealed bid package must be addressed as follows:

Department of Transportation & Public Facilities
Northern Region Procurement, Supplies & Services
Attention: **Cathy Norum**
Invitation to Bid (ITB) Number: **2524N188**
ITB Title: **Crushed Aggregate, E-1 Galena, Ak**
2301 Peger Road
Fairbanks, AK 99709

If submitting your bid via email, the entire bid may be emailed to dotnrprocurement@alaska.gov and must contain the ITB number in the subject line of the email. The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Like sending a hard copy bid, if you are emailing your bid, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of bids.

It is the bidder's responsibility to contact the issuing agency at **(907) 451-2222 or (907) 451-3117** to confirm that the entire bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

SEC. 1.08 ASSISTANCE TO BIDDERS WITH A DISABILITY

Bidders with a disability may receive accommodation regarding the means of communicating this ITB or participating in the procurement process. For more information, contact the procurement officer no later than ten days prior to the deadline for receipt of bids.

SEC. 1.09 AMENDMENTS TO BIDS

Amendments to or withdrawals of bids will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of bids, in accordance with 2 AAC 12.140. No amendments or withdrawals will be accepted after the deadline unless the delay is due to an error of the contracting agency, in accordance with 2 AAC 12.160.

SEC. 1.10 AMENDMENTS TO THE ITB

If an amendment is issued before the deadline for receipt of bids, the amendment will be posted on the State of Alaska Online Public Notice (OPN) website. The link to the posting of the amendment will be provided to all who were notified of the ITB and to those who have registered with the procurement officer after receiving the ITB from the OPN.

SEC. 1.11 ITB SCHEDULE

The ITB schedule below represents the State of Alaska's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of bids, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Standard Time (AST).

ACTIVITY	TIME	DATE
Issue Date / ITB Released		April 9, 2024
Deadline for Receipt of Bids / Bid Due Date	10:00 AM	April 23, 2024
Bid Evaluations Complete		April 23, 2024
Notice of Intent to Award		April 23, 2024
Contract Issued		May 3, 2024
Contract Start Date		May 3, 2024

This ITB does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department **of Transportation** or the Commissioner's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

SEC. 1.12 ALTERNATE BIDS

Are not allowed.

SEC. 1.13 SUPPORTING INFORMATION

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 or services 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, may cause the state to consider the offer non-responsive and reject the bid.

SEC. 1.14 FIRM, UNQUALIFIED, AND UNCONDITIONAL OFFER

To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all 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 must be complied with at risk of bid rejection for non-responsiveness.

SECTION 2. SCOPE OF WORK AND CONTRACT INFORMATION

SEC. 2.01 SPECIFICATIONS

Alaska standard specifications for highway construction

SEC. 2.02 SCOPE OF WORK

See attachment A special provision, Section 104 page 1

SEC. 2.03 CONTRACT TERM

The length of the contract will be from the date of award, approximately **May 2, 2024**, until **September 30, 2024**.

SEC. 2.04 CONTRACT TYPE

This contract is an **AS-NEEDED** contract.

SEC. 2.05 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.

Any single contract payments of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

SEC. 2.06 PROMPT PAYMENT FOR STATE PURCHASES

The state is eligible to receive a **5%** discount for all invoices paid within **15** business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated.

SEC. 2.07 CONTRACT ADMINISTRATION

The administration of this contract is the responsibility of the procurement officer of record.

SEC. 2.08 CONTRACT PRICE

Prices are to remain firm through the duration of the contract

SEC. 2.09 CONTRACT PERFORMANCE LOCATION

The location(s) the work is to be performed, completed, and managed is at the **CONTRACTORS PLANT**.

SEC. 2.10 SUBCONTRACTORS

Subcontractors will not be allowed.

SEC. 2.11 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 2.12 RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, the state may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the state makes such an inspection, the contractor must provide reasonable assistance.

SEC. 2.13 F.O.B. POINT

the F.O.B. point for this ITB will be the Galena Airport. The contractor will be required to prepare the items and to transport them to the ultimate destination specified in the state's order.

SEC. 2.14 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for providing all products or the completion of all work set out in the contract. All products or work is subject to inspection, evaluation, and approval by the state. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The state may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the state to terminate the contract. In this event, the state may require the contractor to reimburse monies paid (based on the identified portion of unacceptable products or work received) and may seek associated damages.

SEC. 2.15 DELIVERY TIME

Indicate, in the space provided on the Bid Schedule, the time required to make delivery after the receipt of an order. Failure to make an entry in the space provided will be construed as an offer to deliver by the required completion date of September 30, 2024. Bids that specify deliveries in excess of this date will be considered non-responsive and the bids will be rejected.

SEC. 2.16 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the state will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured required state approvals necessary and issued a written contract amendment.

SEC. 2.17 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.

SEC. 2.18 BILLING INSTRUCTIONS

All invoices produced by the contractor must contain the following information at a minimum:

1. **Contract Award Number**
2. **Quantity**
3. **Amount**

Invoices must be billed to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order. The state will make payment after it receives the goods or services and the invoice. Questions concerning payment must be addressed to the ordering agency.

SEC. 2.19 ESTIMATED QUANTITIES

The quantities referenced in this ITB are an estimate of the of the state's initial purchase. The state expects to make this purchase approximately **May 2, 2024**. The state does not guarantee any minimum or maximum purchase.

SEC. 2.20 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. “Reasonable care” means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc.).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor’s receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

SEC. 2.21 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.

SEC. 2.22 INSURANCE

Without limiting the contractor's indemnification, it is agreed that the 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 contract approval 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.

SECTION 3. BID FORMAT AND CONTENT

SEC. 3.01 BID FORMS

Bidders shall use the front page of this ITB, the Bid Submission Cover Sheet, and any other forms identified in this ITB for submitting bids. All bids must be signed by an individual authorized to bind the bidder to the provisions of the ITB.

BIDDER'S CERTIFICATION

By signature on the bid, the bidder certifies that they comply with the following:

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
- E. all terms and conditions set out in this ITB;
- F. the price(s) submitted was arrived at independently arrived and without collusion, under penalty of perjury; and
- G. that the bid will remain open and valid for at least 90 days.

If any bidder fails to comply with [a] through [g] of this paragraph, the state reserves the right to disregard the bid, terminate the contract, or consider the contractor in default.

CONFLICT OF INTEREST

See attachment #B for instructions.

SEC. 3.02 BID BOND – PERFORMANCE BOND – SURETY DEPOSIT

Bid Guarantee

Bidders must obtain a bid bond and submit it with the bid. The amount of the bid bond for this contract is **\$5,000.00**. If a bidder is selected to receive the contract and fails to negotiate or fails to deliver a fully executed contract after negotiation, the bid bond will be immediately forfeited to the state. The time limit for negotiation or delivery of a contract is 14-days from the date the bidder receives notice from the procurement officer. bids submitted without a bid bond will be rejected.

Performance Bond

Bidders must obtain a letter of commitment for a performance bond from a bonding company and submit it with the bid. The amount of the performance bond must be equal to the entire dollar value of a bidder's offer, for the full term of the contract. If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to obtain timely performance of the contract. The actual performance bond must be obtained from the bonding company and provided to the state within 30-days of the date of award of the contract. A bidder's failure to provide the performance bond, within the required time, will cause the state to reject the bid or cancel the contract.

Surety Deposit

In lieu of a performance bond, an irrevocable letter of credit, or cash, may be substituted. The amount of the surety deposit must be the entire dollar amount. Substitution of a surety deposit must be approved by the Commissioner of the Department of Transportation prior to its submittal. A bidder's failure to provide the surety deposit, within the required time, will cause the state to reject the bid.

SEC. 3.03 PRICES

The bidder shall state prices in the units of issue on this ITB. 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.

SECTION 4. EVALUATION AND CONTRACTOR SELECTION

SEC. 4.01 EVALUATION OF BIDS

After bid opening, the procurement officer will evaluate the bids for responsiveness. Bids deemed non-responsive will be eliminated from further consideration. An evaluation may not be based on discrimination due the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder.

SEC. 4.02 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.

SEC. 4.03 METHOD OF AWARD

Award will be made as one lot to the lowest responsive and responsible bidder. In order to be considered responsive, bidders must bid on all items.

SEC. 4.04 CONTRACTOR SELECTION PROCESS

Once the contracts are established this selection process will be used. When the state needs to order the product or service, the lowest priced contractor for that location will be contacted first. If, for any reason, the lowest contractor is not available to perform the needed service, the state will contact the next lowest priced contractor for that location. This process will continue until a contractor who can perform the service is located. The location of the contractor initially contacted will be determined by the starting location of the call-out. For example, if a there was a need to transport a person from Anchorage to Fairbanks and then guard the person for two days in Fairbanks, the agency would contact Anchorage contractors, even though a substantial portion of the actual service would be performed in Fairbanks.

SEC. 4.05 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 sent 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.

SECTION 5. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 5.01 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer. If performed, the scope of the debriefing will be limited to the products provided or work performed by the contractor.

SEC. 5.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder must hold a valid Alaska business license. ~~However, to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license prior to the deadline for receipt of bids.~~ Bidders should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license,
- certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid,
- a canceled check for the Alaska business license fee,
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office, or
- a sworn and notarized statement that the bidder has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time bids are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of bids, all bidders must hold any other necessary applicable professional licenses required by Alaska Statute.

SEC. 5.03 AUTHORITY

This ITB is written in accordance with AS 36.30 and 2 AAC 12.

SEC. 5.04 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.

SEC. 5.05 SUITABLE MATERIALS, ETC.

Unless otherwise specified in this ITB, 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.

SEC. 5.06 WORKMANSHIP AND 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 redone, by the contractor, at the contractor's risk and expense.

SEC. 5.07 CONTRACTOR SITE INSPECTION

The state may conduct on-site visits to evaluate the bidder's capacity to perform the contract. A bidder must agree, at risk of being found non-responsive and having its bid rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

SEC. 5.08 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. Unless otherwise specified in 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.

SEC. 5.09 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/j/tip/>

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

SEC. 5.10 RIGHT OF REJECTION

Bidders must comply with all the terms of the ITB, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement officer may reject any bid that does not comply with all the material and substantial terms, conditions, and performance requirements of the ITB.

Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the procurement officer may determine the bid to be a non-responsive counteroffer and the bid may be rejected.

Minor informalities that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other bidders,
- do not change the meaning or scope of the ITB,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or
- do not constitute a substantial reservation against a requirement or provision,

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it is determined to be in the state's best interest.

A bid from a debarred or suspended bidder shall be rejected.

SEC. 5.11 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any bid.

SEC. 5.12 DISCLOSURE OF BID CONTENTS

All bid prices become public information at the bid opening. After the deadline for receipt of bids, all other bid material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All other bid information will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, bids will become public information.

The Office of Procurement and Property Management (OPPM), or their designee recognizes that some information a bidder submits might be confidential under the United States or the State of Alaska Constitution, a federal statute or regulation, or a State of Alaska statute: i.e., might be confidential business information (CBI). *See, e.g.*, article 1, section 1 of the Alaska Constitution; AS 45.50.910 – 45.50.945 (the Alaska Uniform Trade Secrets Act); *DNR v. Arctic Slope Regional Corp.*, 834 P.2d 134, 137-39 (Alaska 1991). For OPPM or their designee to treat information a bidder submits with its bid as CBI, the bidder must do the following when submitting their bid: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the bidder asserts make the information CBI. If the bidder does not do these things, the information will become public after the Notice of Intent to Award is issued. If the bidder does these things, OPPM or their designee will evaluate the bidder's assertion upon receiving a request for the information. If OPPM or their designee assignments

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer. Bids that are conditioned upon the state's approval of an assignment will be rejected as non-responsive.

SEC. 5.13 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.

SEC. 5.14 DEFAULT

In case of default by the contractor, for any reason whatsoever, the state 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.

SEC. 5.15 DISPUTES

If the contractor has a claim arising in connection with the contract that it cannot resolve with the state by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632.

SEC. 5.16 SEVERABILITY

If any provision of the contract or agreement is found to be invalid or 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.

SEC. 5.17 CONTRACT CANCELLATION

- 1) The state reserves the right to cancel the contract at its convenience upon **30** calendar days written notice to the contractor. The state is only liable for payment in accordance with the payment provisions of this contract for supplies or services provided before the effective date termination.
- 2) By signature on their bid, the bidder certifies that they will not support or participate in a boycott of the State of Israel. Failure to comply with this requirement may cause the state to reject the bid as non-responsive or cancel the contract.

SEC. 5.18 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 5.15 of this ITB, any claim concerning the contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 5.19 QUALIFIED BIDDERS

Per 2 AAC 12.875, unless provided for otherwise in the ITB, to qualify as a bidder for award of a contract issued under AS 36.30, the bidder must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the ITB.

If the bidder leases services or supplies or acts as a broker or agency in providing the services or supplies to meet these requirements, the procurement officer may not accept the bidder as a qualified bidder under AS 36.30.

SEC. 5.20 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contract price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
 - a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract.
 - b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](#), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
- **State's Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
- **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

SEC. 5.21 PROTEST

AS 36.30.560 provides that an interested party may protest the content of the ITB.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or bidder whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer prior to the deadline for receipt of bids.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If a bidder wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing, by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a bid to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- the name, address, and telephone number of the protester,
- the signature of the protester or the protester's representative,
- identification of the contracting agency and the solicitation or contract at issue,
- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents, and
- the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. Fax copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All bidders will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

SECTION 6. ATTACHMENTS

SEC. 6.01 ATTACHMENTS

Attachments:

- 1) Attachment A Special Provisions (18 Pages)
- 2) Attachment B Cover -Questions- Conflict – Bid Schedule (8 pages)
- 3) Attachment C Buy America forms 25D-60, 25D-62 & Federal Aid Contract Provisions (FHWA 13-pages)

SECTION 101 DEFINITIONS AND TERMS

101-1.03 DEFINITIONS.

ENGINEER. The authorized representative of the Contracting Officer who is responsible for administering the Contract shall be Henry Cole, P.E., or his designee; phone 907-451-2223 or email Henry.Cole@Alaska.gov. This project takes place in the Interior Aviation Maintenance and Operations District; the Superintendent of which is Jason Ludington; phone 907-451-5280, or email Jason.Ludington@Alaska.gov.

SECTION 104 SCOPE OF WORK

104-1.01 INTENT OF CONTRACT. The intent of the Contract is to provide for the production, transport and/or stockpiling of processed aggregate, as described herein. The site listed below is the location of the final stockpile only; this does not indicate the source or the quality of the material.

The Contractor is responsible for the means, methods, techniques, sequence and procedures or construction, safety and quality control, and is responsible to perform and furnish the work in accordance with the Contract documents and any applicable Federal, State and local laws, rules, regulations and ordinances. In addition, the Contractor must acquire the material sources and all necessary permits, process and stockpile the required aggregate, and pay all associated fees and royalties. Proof of royalty payments shall be required prior to final payment under this Contract.

The location and quantity required are as follows:

TABLE 104-1

Material Site No.	Location	Quantity (CY)	Royalty	Completion Date
N/A*	Galena Airport Stockpile area (Runway 07 end)*	1,500-5,000	N/A	09/30/2024

* This is a stockpile site only. Material shall be mined and processed elsewhere and hauled to this location.

The Contractor shall take all necessary precautions not to contaminate the materials. Final gradations and quantity measurements for acceptance and payment will be taken at the final location of the completed stockpile.

All stockpiles shall be stacked so that they are easily accessible on all sides with heavy hauling equipment, and, if located in a State Material Site, situated so as not to impact future mining operations in the site.

Geotechnical reports for State material sites may be available from the Engineer. State material reports and geotechnical data are for informational purposes only, and may not accurately represent the conditions found onsite. Any information provided should not substitute for personal investigation, research and judgment of the bidders.

The bidder is expected to examine carefully the sites of the proposed work and all contract documents before submitting a bid. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and the requirements of the Contract.

SECTION 105 CONTROL OF WORK

105-1.01 AUTHORITY OF THE ENGINEER. The Engineer has immediate charge of the engineering details of the project and is responsible for Contract administration. The Engineer has authority to reject defective material and suspend work being performed improperly. The Engineer has authority to accept completed work, issue Directives, issue Interim Work Authorizations, issue Change Orders, and recommend Contract payments.

The Engineer will decide all questions about the quality and acceptability of the materials furnished and the work performed by the Contractor, the Contractor's rate of progress, Contract interpretation and all other questions relating to Contract performance.

The Engineer has authority to suspend work. If the suspension is to protect workers or the public from imminent harm, the Engineer may orally order the suspension of work. Following an oral order of suspension, the Engineer will promptly give written notice of suspension. In other circumstances, the Engineer will give the Contractor written notice of suspension before suspension of work. A notice of suspension will state the defects or reasons for a suspension, the corrective actions required to stop suspension, and the time allowed to complete corrective actions. If the Contractor fails to take the corrective action within the specified time, the Engineer may:

1. Suspend the work until it is corrected; and
2. Employ others to correct the condition and deduct the cost from the Contract amount.

The Engineer may, at reasonable times, inspect any part of the plant or place of business of the Contractor or any subcontractor that is related to Contract performance, including private or commercial plants, shops, offices, or other places of business.

The Engineer may audit all books and records related to performance of the Contract, whether kept by the Contractor or a subcontractor.

105-1.03 CONFORMITY WITH PLANS AND SPECIFICATIONS. Work performed and materials furnished shall conform to the Specifications and approved Mining Plan and be within specified tolerances. When tolerances are not specified, the Engineer will determine the limits allowed in each case.

All work or material not conforming to the Specifications and approved Mining Plan is considered unacceptable unless the Engineer finds that reasonably acceptable work has been produced. In this event, the Engineer may allow non-conforming work or material to remain in place, but at a reduced price. The Engineer will document the basis of acceptance and payment by Change Order.

The failure of the Department to strictly enforce the Contract in one or more instances does not waive its right to do so in other or future instances.

If the Contractor fails to promptly correct, remove, or replace unacceptable or unauthorized work as ordered by the Engineer, the Engineer may employ others to remedy or remove and replace the work and will deduct the cost from the Contract payment.

105-1.05 COOPERATION BY CONTRACTOR. The Contractor shall give the work the constant attention necessary for its progress, and shall cooperate fully with the Engineer, Department staff, and other contractors in every way possible. Either the Contractor's Superintendent or an acting Superintendent with authority to represent and act for the Contractor shall be available within the proximity of the project whenever work is occurring. The Contractor shall employ, as its agent, a competent superintendent thoroughly experienced in the type of work being performed and capable of reading and thoroughly understanding the Plans and Specifications. The Contractor shall provide 24-hour contact information for the Superintendent. The Contractor shall ensure that the superintendent is available at all times to receive and execute Directives and other instructions from the Engineer, to supervise workers and to coordinate the work of subcontractors. The Contractor shall give the superintendent full authority to supply the resources required. The Contractor shall furnish superintendence regardless of the amount of work sublet.

105-1.12 LOAD RESTRICTIONS. The Contractor shall comply with all vehicle legal size and weight regulations of 17 AAC 25 and the Administrative Permit Manual, and shall obtain permits from the DOT&PF Division of Measurement Standards & Commercial Vehicle Enforcement before moving oversize or overweight equipment on a state highway.

SECTION 106 CONTROL OF MATERIAL

106-1.02 MATERIAL SOURCES.

1. General. The Contractor shall:
 - a. produce a sufficient quantity of materials meeting the specifications to complete the project;
 - b. as a subsidiary cost: clear and grub, strip, drill and blast, excavate, crush, sort, blend, screen, wash, stockpile, haul, and rehandle material as needed to produce and deliver the specified product;
 - c. determine the type of equipment and methods to be used;
 - d. expect variations in material quality within the deposits, and procure material only from acceptable portions of the deposit, regardless of source ownership; and
 - e. prevent erosion, sedimentation, and pollution within a materials source.

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

The Contractor agrees that:

- a. the costs to explore and develop material sources, including all production effort, are subsidiary to the cost of providing the specified material;
 - b. the Engineer may order the Contractor to procure material only from certain portions of the source and may reject material from other portions of the source that does not conform to the specifications; and
 - c. all material required may not be procurable from any one source and the Contractor may need to change between sources. That contingency is to be factored into the unit bid price for the Contract Item.
2. Inspection and Acceptance. The Contractor shall perform sampling and testing during materials processing and placement in accordance with its Process Control Plan (Subsection 106-1.03-1) and shall obtain acceptable material samples from locations designated within the source.

The Department will sample and test materials to determine the quality of the source, at its expense, as part of its Acceptance Testing (Subsection 106-1.03.2). The Department will reject materials when the samples do not meet specifications. The Department may reject a proposed materials site when samples do not meet specifications.

3. Awareness Training. The operator of the Contractor's sand and gravel surface mine or other similar materials source shall provide Site-Specific Hazard Awareness Training in compliance with 30 CFR 46.11 for all the Engineer's personnel before beginning operations. All other workers shall be given training in compliance with 30 CFR 46 before exposure to mine hazards. The training must be offered at each surface mine that will be used to supply processed aggregates. A qualified person must provide the training. The training shall be in accordance with the operator's written training plan approved by the Mine Safety and Health Administration, covering the following items:
- a. Site-specific health and safety risks;
 - b. Recognition and avoidance of hazards;
 - c. Restricted areas;
 - d. Warning and evacuation signals;
 - e. Evacuation and emergency procedures;
 - f. Other special safety procedures; and
 - g. A site tour.

The Contractor shall require the Engineer's personnel to sign the Visitor's Log Book upon completion of the training to indicate that training was provided. Training is a subsidiary cost.

4. Type of Sources. The location(s) identified in Section 104-1.01 are to be the site of the finished stockpile only and do not specify the source or quality of the material to be produced. The Contractor shall supply the required material from one or more of the following types of sources:
- a. Department Furnished Material Sites. The Contractor shall obtain approval from the Engineer prior to any construction activities. Existing stockpiles of material in State sites are not available to the Contractor without prior approval from the Engineer. All stockpiled aggregate including rejected material is property of the State and shall be handled or stockpiled as described in the Contractor's approved Mining Plan, unless directed otherwise by the Engineer. At no time does the Contractor have any ownership of material, including reject, produced under this Contract. The materials in this site are not available for any use other than required by this Contract, unless approved by the Engineer. The Contractor shall be responsible for paying any mineral royalty due, as indicated in Section 104-1.01. Geotechnical information may be available, but should not be considered to be authoritative. All work and development in a Department-Furnished material site shall be in line with the Department's existing site-specific Mining Plan.
 - b. Contractor-Furnished Sources. The Contractor is encouraged to use State furnished material sites or work within an approved Right of Way for both mining and for the final stockpile locations. The use of private sources for mining and stockpile storage will require the Contractor to make all necessary agreements (See Subsection 106-1.02.5). When the Contractor elects to use a material site not furnished by the Department, including State-owned land not under the Department's control, the Contractor shall:
 - 1) Acquire the necessary rights and permits to obtain material;
 - 2) Pay as subsidiary costs all related costs to obtain and use material from the source, including, but not limited to, permit fees, mineral royalties and associated hauling costs;
 - 3) Be solely responsible for the quality and quantity of material; and

- 4) Obtain all necessary rights, permits and plan approvals before clearing or disturbing the ground in the material source. The Contractor shall certify in writing to the Engineer that all permits and clearances relating to the use of the material source have been obtained prior to any work in the material source.

No price adjustment or other compensation will be made for any costs, including increased length of haul, if the Contractor:

- 1) Chooses to change material sources for any reason;
- 2) Is unable to produce a sufficient quality or quantity of materials from Contractor-Furnished sources; or
- 3) Encounters unexpected, unforeseen or unusual conditions within a Contractor-Furnished source.

5. Rights, Permits and Plan Approvals for Material Sources. Before disturbing the site of a material source, the Contractor shall acquire, pay for and provide to the Engineer all necessary rights, permits, and plan approvals indicated in this Subsection and elsewhere in this Contract. For each material site, the Contractor shall:

- a. All other sites: Submit for the Engineer's comment and approval, no fewer than 30 days prior to mobilization, a mining and reclamation plan (MRP). During development of each MRP, the Contractor shall consider future activities in the material site and shall maintain access to usable material. The MRP shall include:

- (1) Approval from the landowner (if a Contractor-Furnished source, see Subsection 106-1.02-4-b-2);
- (2) A process control plan (see Subsection 106-1.03-1);
- (3) Plan and cross-sectional views of the site (this includes both the mining and disposal areas);
- (4) Applicable boundary lines, property lines and buffer zones;
- (5) Areas and Depths to be developed (note, development of Department-Furnished sources shall be in accordance with the Department's Mining Plan for that site);
- (6) Locations of access roads, stripping, sorting, waste piles, crushing and plant sites, stockpile sites (including reject material), buffer zones, drainage features, erosion and pollution control features;
- (7) Condition the Contractor will leave the site in after the materials extraction is completed, including reseeded if necessary;
- (8) A Construction General Permit-compliant Storm Water Pollution Prevention Plan, if required by Section 641; and
- (9) Other information as required by any and all attachments included with bid (ie BLM Mining Plan Review checklist, DOT MRP and/or any site-specific stipulations that may be included).

- b. If the material is to be stockpiled in a Contractor-Furnished site or otherwise on private property, the Contractor shall supply the following information in addition to the MRP:

- (1) A notarized agreement with the property owner allowing the State full and unfettered access to the stockpile until 12/31/2026. The owner shall certify that they have the authority to sell mineral materials from the property, and shall acknowledge the Department's ownership of the stockpiled material;
- (2) A property map of the material site identifying property boundaries, access routes and stockpile location.

106-1.03 TESTING AND ACCEPTANCE. Materials are subject to inspection and testing by the Department at any time before, during or after their incorporation into the stockpile. The Contractor shall remove and replace unacceptable material according to Subsection 105-1.03.

1. Quality Control. The Contractor is responsible for the quality of materials produced under this Contract. Quality Control is process control, and includes all activities needed to ensure that the product meets Contract specifications. Quality control work is subsidiary to the applicable pay items. The Contractor shall perform quality control as follows:
 - a. Develop and submit a Process Control plan as part of the MRP (Subsection 106-1.02-5), including testing and frequency, personnel qualifications, equipment descriptions and criteria for corrective actions.
 - b. Sample material during production and perform quality control testing, as needed, to ensure materials produced to Contract Specifications. Document all quality control testing and make the results available to the Engineer within three days of sampling.
 - c. Due to the nature of this work, it is recommended that the Contractor maintain an on-site materials lab and a WAQTC-certified technician to perform process control. If testing will be done off-site, material processing may need to be suspended pending receipt of results.
2. Acceptance Testing. The Department reserves the right to conduct its own testing of the acceptability of the materials. This testing will be performed at the Department's expense, and copies of the test results may be

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

furnished to the Contractor upon request. The Engineer may elect, at his discretion, to retest materials that have failed the Department's acceptance testing.

3. **Minimum Testing Requirements.** Tests shall be performed at minimum according to Table 106-1 below. Failing test results not in substantial conformance may be the basis of the Engineer's rejection of the represented material, and no payment will be made for unacceptable material, as outlined in Subsection 105-1.03. The Contractor shall produce and test additional material until the Contract quantity has been fully accepted and completed. Failing test results shall not be a basis for any time extension or modification to Contract requirements.

TABLE 106-1

Item	Test	Test Number	Specifications	Frequency (min.)
Crushed/ Stockpiled Aggregate	Process Control Gradation & Fracture, by Contractor	AASHTO T27/T11	Refer to 703	1/Source, 1/1,000 C.Y.
	Acceptance, by Engineer	AASHTO T27/T11	Refer to 703	1/ Source, 1/10,000 C.Y.

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-1.01 LAWS TO BE OBSERVED. The Contractor shall keep fully informed of, observe, and comply with all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, that in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work.

The Contractor and the Surety shall defend, indemnify, and hold harmless the State and its representatives against any claim or liability related to violations of any laws, regulations or decrees by the Contractor, the Contractor's agents, the Contractor's employees, a subcontractor at any tier, or a supplier or service provider.

The Contractor has the affirmative duty to keep informed of and comply with all laws. The Contractor is not entitled to and shall not rely on any Department employee's interpretation, whether oral or written, of any law, ordinance, or regulation.

The Contractor is responsible for conspicuously displaying required posters in an area readily accessible to workers.

1. For wholly state-funded projects, display all posters listed on the Department of Labor and Workforce Development website at <http://www.labor.alaska.gov/lss/posters.htm>.
2. On projects using federal funds, display posters required by law or funding agency including posters listed on the FHWA website <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>.

107-1.02 PERMITS, LICENSES, AND TAXES. The terms, conditions, and stipulations in permits obtained either by the Department or by the Contractor are made a part of this Contract. Permits obtained by the Department for this project are attached to these Specifications as appendices. Contact names and phone numbers for permits obtained by the Department are shown on the individual permits.

The Department will:

1. Secure permits and licenses that the Department determines are required for the construction of the proposed project, and the use of mandatory sources, designated sources and designated material disposal areas for the proposed project; and
2. Modify Department-acquired permits during the performance of the Contract, if deemed necessary by the Engineer.

The Contractor shall:

1. Acquire any permits and licenses required to complete the project that are not acquired by the Department;
2. Provide qualified professionals to collect data or perform studies necessary to acquire permits for the use of sites not previously permitted;
3. Give all notices required for the prosecution of the work;
4. Abide by all permits and licenses whether acquired by the Department or by the Contractor;

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

5. Notify the Engineer promptly if any activity cannot be performed as specified in the permits, and cease conducting the activity until permit modifications or any required additional permits are obtained;
6. Obtain modifications to permits acquired by the Contractor; SECTION 107 48 ALASKA 2020
7. Pay all charges, fees and taxes;
8. Provide proof of payment of all taxes before the Department makes final payment; and,
9. Provide the information necessary to comply with the Alaska Department of Environmental Conservation, Alaska Pollutant Discharge Elimination System (APDES) to discharge stormwater from the construction site. Requirements for this permit are given under Section 641, Erosion, Sediment, and Pollution Control.

The provisions of permits acquired by the Contractor, and of notices and information under this section does not shift or create responsibility for compliance with Federal or State law to the Department, or otherwise impose a duty for oversight or review. In addition, before using an area on or off project site not previously permitted for use by the Contract, the Contractor shall:

1. Contact all government agencies having possible or apparent permit authority over that area;
2. Obtain all required permits, clearances, and licenses from those agencies;
3. Obtain permission from any property owners or lessees with an interest in the property; and
4. Provide all of the following to the Engineer:\
 - a. All permits or clearances necessary to use the site for its intended purpose(s);
 - b. A written statement that all permits or clearances necessary have been obtained;
 - c. Written evidence that the Contractor has contacted all of the relevant agencies and that no additional permits are required on the part of the Contractor, including at a minimum the name of the agency and staff person contacted, the date contacted, and result of coordination; and
 - d. A plan that identifies how the site will be finally stabilized and protected.

The Engineer may reject a proposed site if the Contractor fails to provide any of the above information or to demonstrate that a proposed site can be finally stabilized to eliminate future adverse impacts on natural resources and the environment.

107-1.03 PATENTED DEVICES, MATERIALS AND PROCESSES. If the Contractor employs any design, device, material, or process covered by patent, trademark, or copyright, the Contractor shall obtain and provide the Engineer with a copy of a suitable legal agreement with the patentee or owner. The Contractor and the Surety shall defend, indemnify, and hold harmless the State and its representatives and any affected third party or political subdivision from any claim, cause of action, and damages for infringement arising from or relating to the Contractor's use of a patented design, device, material, process, trademark, or copyright.

107-1.06 SANITARY, HEALTH, AND SAFETY PROVISIONS. The Contractor shall provide and maintain neat and sanitary accommodations for employees that meet all federal, state and local requirements. The Contractor shall comply with federal, state, and local laws, rules, and regulations concerning construction safety and health standards, including U.S. Mine Safety and Health Administration rules when the project includes pit or quarry operations. The Contractor shall not expose the public to, or require any workers to work under, conditions that are unsanitary, hazardous, or dangerous to health or safety. The Contractor is responsible for ensuring all workers are adequately protected. The Contractor shall have a safety and health management program that complies with AKOSH requirements, and includes:

1. A worksite hazard analysis;
2. A hazard prevention and control plan including personal protective equipment and safe work procedures required for specific tasks;
3. New employee training and periodic worker training regarding safety and health;
4. Regular safety meetings with written documentation of attendance, safety topics discussed, worker safety complaints, and corrective actions taken; and
5. A designated safety officer, employed by the Contractor, who monitors the construction site and is responsible for implementing the safety and health management program.

The Contractor and Surety shall defend, indemnify and hold harmless the State of Alaska from all claims, causes of action and judgments arising from or relating to the Contractor's failure to comply with any applicable federal, state or local safety requirement, regulation or practice, whether or not listed above.

107-1.07 ARCHAEOLOGICAL OR HISTORICAL DISCOVERIES. If the Contractor's operation encounters prehistoric artifacts, burials, remains of dwelling sites, paleontological remains, shell heaps, land or sea mammal bones, tusks or other items potentially of historical significance, the Contractor shall:

1. Immediately cease operations at the site of the find;
2. Immediately notify the Engineer of the find; and
3. Not disturb or remove the finds or perform any further operations at the site until directed by the Engineer.

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

The Engineer will issue an appropriate Change Order if operations are to be suspended, or extra work is needed to protect the find.

107-1.09 CONSTRUCTION OVER OR ADJACENT TO WATERS. The Contractor shall fully comply with all laws, regulations and permits issued by agencies of the United States and the State of Alaska when working in, over or adjacent to wetlands, tidelands, anadromous fish streams, eagle nests, navigable waters, or coastal waters.

107-1.10 USE OF EXPLOSIVES. The Contractor shall obey all laws, regulations and permits applicable to using, handling, loading, transporting, or storing explosives. When using explosives, the Contractor shall take utmost care not to endanger life, property, new construction, or existing portions of the project and facilities that are to remain in place after the project is complete.

The Contractor shall provide notice to property owners, the traveling public, and utility companies in the vicinity before using explosives. The Contractor shall provide notice to the Federal Aviation Administration when required by law. The Contractor shall notify police and fire authorities in the vicinity before transporting or using explosives. The Contractor shall provide notice sufficiently in advance to enable all potentially affected parties to take whatever steps they may deem necessary to protect themselves and their property from injury or damage.

The Contractor is liable for all property damage, injury, or death resulting from the use of explosives on the project. The Contractor shall indemnify, hold harmless, and defend the State of Alaska from all claims related to the use of explosives on the project, including claims from government agencies alleging that explosives were handled, loaded, transported, used, or stored improperly.

107-1.12 FOREST PROTECTION. The Contractor shall:

1. Comply with all laws and regulations of the United States and the State of Alaska, local governments, or other authorities governing the protection of forests and the carrying out of work within forests;
2. Keep forest areas in an orderly condition;
3. Dispose of all refuse and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the supervising authorities;
4. Take all reasonable precautions to prevent and suppress forest fires;
5. Require workers and subcontractors, both independently and at the request of officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires; and
6. Make every possible effort to notify the appropriate forestry agency at the earliest moment of the location and extent of any forest fire.

107-1.13 RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, hold harmless, and defend the State of Alaska and its agents and employees from any and all claims or actions for injuries or damages whatsoever sustained by any person or property that arise from or relate to, directly or indirectly, the Contractor's performance of the Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the Department's negligence.

This Contract does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Contract to maintain a suit based on this Contract or any term or provision of the Contract, whether for personal injuries, property damage, or any other claim or cause of action.

107-1.15 CONTRACTOR'S RESPONSIBILITY FOR WORK. The Contractor shall be responsible for implementing all preventative measures necessary to protect, prevent damage, and repair damage to the work from all causes at no additional cost to the Department. This duty continues from the date construction begins until the date specified in a letter of Substantial Completion or Partial Acceptance of a specific section of the project. Where there is a Partial Acceptance, the duty ends only as to the accepted portion of the work. This duty continues during periods of suspended work, except in specific sections the Department has agreed to maintain.

The Contractor shall rebuild, repair, restore, and make good all losses or damages to any portion of the work including that caused by vandalism, theft, accommodation of public traffic, and weather. The Department will only be responsible for loss or damage due to unforeseeable causes beyond the control of and without the Contractor's fault or negligence, such as Acts of God, the public enemy, and governmental authorities.

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

In case of suspension of work from any cause, the Contractor shall take such precautions as may be necessary to prevent damage to the work or facilities affected by the work. This will include providing for drainage and erecting any necessary temporary structures, signs, or other facilities and maintaining all living material such as plantings, seedings, and soddings.

107-1.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.

1. Restoring Areas. Areas used by the Contractor, including haul routes, shall be restored to their original condition after the Contractor's operations are completed. The original condition of an area shall be determined as follows: Prior to commencement of operations, the Engineer and the Contractor shall inspect each area and haul route that will be used by the Contractor and take photographs to document their condition. After construction operations are completed, the condition of each area and haul route will be compared to the earlier photographs. Prior to demobilization the Contractor shall repair damages attributed to its operations. The Contractor agrees that all costs associated with repairs shall be subsidiary to other items of work and will not be paid for directly.
2. Material Disposal Sites. Offsite disposal areas may be at locations of the Contractor's choice, provided the Contractor obtains written permission from the land owner for such disposal and a waiver of all claims against the State for any damage to such land which may result therefrom, together with all permits required by law for such disposal. A copy of such permission, waiver of claims, and permits shall be filed with the Engineer before commencing work on private property. The Contractor's selected disposal sites shall also be inspected and approved by the Engineer prior to use of the sites.
3. Property Marks. The Contractor shall:
 - a. Be responsible for and protect from disturbance all land monuments and property marks until the Engineer has approved the witnessing or otherwise referenced their locations; and
 - b. Not move such monuments or marks without the Engineer's approval.
4. Damage to property. The Contractor shall:
 - a. Be responsible for all damage to public or private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work;
 - b. Be responsible for all damage to public or private property resulting from defective work or materials at any time, before, during, or after project completion; and
 - c. Restore all such damaged property to a condition similar or equal to that existing before the damage occurred, at no additional cost to the Department.
5. Protection of Natural Resources. The Contractor shall:
 - a. Conduct work in a manner that minimizes disturbance to and protects natural resources in compliance with all federal, state, and local laws and regulations;
 - b. When working near designated wetlands, as defined by the Corps of Engineers, place no fill, nor operate equipment outside the permitted area;
 - c. When working in or near designated anadromous fish streams, as defined by AS 41.14.840 and AS 41.14.870, place no fill or dredge material, nor operate equipment, within or on the banks of the stream (including fording) except as permitted by a Alaska Department of Fish and Game Fish Habitat Permit issued for the project;
 - d. Upon completion, all disturbed slopes, cuts, and banked material shall be flattened to a slope no steeper than a 2:1 or as specified in the Material Sales Agreement governing use of the site. No vertical cuts or slopes shall remain;
 - e. Existing approaches to material sites and recreational trails shall not be disturbed or obstructed at any time.
6. Hazardous materials. Hazardous materials include but are not limited to petroleum products, oils, solvents, paints, lead based paints, asbestos, and chemicals that are toxic, corrosive, explosive, or flammable. Except as otherwise specified in this Contract, the Contractor shall:
 - c. Not excavate, nor use for fill, any material at any site suspected of or found to contain hazardous materials or petroleum fuels;
 - d. Not raze and remove, or dispose of structures that contain asbestos or lead-based paints;
 - e. Not stockpile, nor dispose of, any material at any site suspected of or found to contain hazardous materials or petroleum;
 - f. Report immediately to the Engineer any known or suspected hazardous material discovered, exposed, or released into the air, ground, or water during construction of the project;
 - g. Report any containment, cleanup, or restoration activities anticipated or performed as a result of such release or discovery;

SPECIAL PROVISIONS **Galena Aggregates Stock Piling**

7. Protected areas. The Contractor shall not use land from any park, recreation area, wildlife or waterfowl refuge, or any historical site located inside or outside of the project limits for excess fill disposal, staging activities, equipment or material storage, or for any other purposes unless permitted by the Contract or unless all permits and clearances necessary for such work have been obtained by the Contractor.
8. Solid waste. The Contractor shall remove all debris, trash, and other solid waste from the project site as soon as possible and in accordance with the Alaska Department of Environmental Conservation Solid Waste Program.

107-1.13 RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, hold harmless, and defend the State of Alaska and its agents and employees from any and all claims or actions for injuries or damages whatsoever sustained by any person or property that arise from or relate to, directly or indirectly, the Contractor's performance of the Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the Department's negligence.

This Contract does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Contract to maintain a suit based on this Contract or any term or provision of the Contract, whether for personal injuries, property damage, or any other claim or cause of action.

107-1.15 CONTRACTOR'S RESPONSIBILITY FOR WORK. The Contractor shall be responsible for implementing all preventative measures necessary to protect, prevent damage, and repair damage to the work from all causes at no additional cost to the Department. This duty continues from the date construction begins until the date specified in a letter of Substantial Completion or Partial Acceptance of a specific section of the project. Where there is a Partial Acceptance, the duty ends only as to the accepted portion of the work. This duty continues during periods of suspended work, except in specific sections the Department has agreed to maintain under Subsection 643-3.07. The Contractor shall rebuild, repair, restore, and make good all losses or damages to any portion of the work including that caused by vandalism, theft, accommodation of public traffic, and weather. The Department will only be responsible for loss or damage due to unforeseeable causes beyond the control of and without the Contractor's fault or negligence, such as Acts of God, the public enemy, and governmental authorities. In case of suspension of work from any cause, the Contractor shall take such precautions as may be necessary to prevent damage to the work or facilities affected by the work. This will include providing for drainage and erecting any necessary temporary structures, signs, or other facilities and maintaining all living material such as plantings, seedings, and soddings.

107-1.17 FURNISHING RIGHT-OF-WAY. The Department will secure all necessary right-of-way or property in advance of construction. Any exceptions will be indicated in the Contract.

107-1.18 PERSONAL LIABILITY OF PUBLIC OFFICIALS. There shall be no liability upon the Engineer and their authorized representatives, either personally or as officials of the state, in carrying out any of the provisions of this Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, it being understood that in all such matters the Engineer and their authorized representatives act solely as agents and representatives of the State. The Contractor shall bring no suit related to or arising under this Contract naming as defendants any State officer, employee or representative in either their personal or official capacities, and shall include a prohibition to that effect in all subcontracts entered into for this Project.

107-1.19 NO WAIVER OF LEGAL RIGHTS. The Department shall not be precluded nor estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any measurement, estimate, or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract.

The Department shall not be precluded nor estopped, notwithstanding any measurement, estimate, or certificate and payment, from recovering from the Contractor or the Contractor's Sureties, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract.

Neither the acceptance by the Department, or by any representative of the Department, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver by the Department of any portion of the Contract or of any right of the Department to damages. A waiver by the Department of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

107-1.20 GRATUITY AND CONFLICT OF INTEREST. The Contractor shall not extend any loan, gratuity, or gift of money of any form whatsoever to any employee of the Department, nor will the Contractor rent or purchase any equipment or

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

materials from any employee of the Department or to the best of the Contractor's knowledge from any agent of any employee of the Department.

SECTION 108 PROSECUTION AND PROGRESS

108-1.03 PROSECUTION AND PROGRESS. The Contractor shall meet with the Engineer or his designee at either the district maintenance and operations station for which the Contract is for (see Subsection 101-1.03 Engineer) or schedule a teleconference with the Engineer 14 days before mobilization to the project site. The Contractor shall submit the following documents to the Engineer at least three working days before the referenced meeting:

1. A progress schedule in a format acceptable to the Engineer, showing the order in which the Contractor proposes to carry out the work and the contemplated dates on which the Contractor and the subcontractor will start and finish each of the salient features of the work, including any scheduled periods of shutdown. The schedule shall indicate the anticipated hours of operation and any anticipated periods of multiple-shift work;
2. A letter designating the Contractor's Project Superintendent, defining that person's responsibility and authority, and providing a specimen signature;
3. A Mining and Reclamation Plan, as outlined in Subsection 106-1.02-5;
4. A SWPPP, if one is required by Subsection 641, and designated field representatives; and
5. A Process Control Plan, as outlined in Subsection 106-1.03-1.

The Contractor shall provide adequate materials, labor and equipment to ensure the completion of the project according to the Plans and Specifications. The work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit. The Contractor shall take into consideration and make due allowances at the Contractor's expense for foreseeable delays and interruptions to the work such as unfavorable weather, frozen ground, equipment breakdowns, shipping delays, quantity overruns, utility work, permit restrictions, and other foreseeable delays and interruptions. The Contractor shall identify these allowances on the progress schedule.

The Contractor shall adjust forces, equipment and work schedules as necessary to ensure completion of the work within the Contract time, and shall notify the Engineer at least 24 hours before resuming suspended operations. Upon a substantial change to the work schedule or when directed by the Engineer, the Contractor shall submit a revised progress schedule in the form required, including a written explanation for each revision made in the schedule or methods of operation.

The Engineer's review or approval of the documents, plans, and schedules provided by the Contractor under this section shall not change the Contract requirements, release the Contractor of the responsibility for successful completion of the work or relieve the Contractor of the duty to comply with applicable laws. The Engineer's review or approval of schedules shall not indicate agreement with any assertions of delay or claims by the Contractor.

It is the Contractor's responsibility to prepare and submit documents that satisfy all applicable contract requirements. By reviewing and approving the Contractor's documents, the Department does not warrant that following the Contractor's documents will result in successful performance of the work. The Department's failure to discover defects in the Contractor's documents, the assumptions upon which they are based or conditions that prevent the Contractor from performing the work as indicated in the documents will not entitle the Contractor to additional compensation or time. If the Contractor becomes aware of any act or occurrence that may form the basis of a claim for additional compensation or an extension of time, it must specifically advise the Engineer of these conditions as soon as possible.

108-1.04 LIMITATION OF OPERATIONS. The Contractor shall not open up work to the detriment of work already started. The Contractor shall minimize interference with traffic within the project. The Contractor shall not stop or otherwise impede traffic outside the project limits without the Engineer's prior written permission. The Engineer may require the Contractor to finish a section of work in progress before starting additional sections if the Engineer determines it is necessary for the convenience of the public or the Department.

108-1.05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT. The Contractor shall employ sufficient labor and equipment to complete the work required under the Contract and to complete it on time. The Contractor shall ensure that all workers on the project have the skills and experience necessary to properly perform their assigned work. Workers engaged in special work or skilled work shall have sufficient experience in that work and in the operation of the equipment required to properly perform that work.

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

The Contractor shall comply with any written order by the Engineer to remove workers, who, in the opinion of the Engineer, perform the work in an unskilled manner, who are intemperate or disorderly, create risk of imminent harm for the traveling public, or who fail to perform the work in accordance with the Contract and any and all applicable federal, state, and local laws, rules, regulations, and ordinances. The Contractor shall allow removed workers to return to the project only with the Engineer's written permission. The Engineer may suspend the work if the Contractor fails to furnish suitable and sufficient personnel necessary to perform the work, or fails to remove any worker at the Engineer's order.

The Contractor shall not use prisoner labor on the project.

The Contractor shall use equipment of the appropriate size and mechanical condition to produce the specified quality and quantity of work by the means specified in the Contract, if any, and shall ensure that the equipment does not damage roadways or property. The Contractor shall ensure all equipment, materials, and articles incorporated into the work are new and of the specified quality, unless the Contract specifically permits otherwise. The Contractor shall provide the Engineer with a list of all powered equipment that will be used on the project, showing the make, model, year, capacity, horsepower, and related information. The Contractor shall update this list when equipment is added or removed from the work site, but need not update more frequently than weekly.

When the methods and equipment to be used by the Contractor are not prescribed by the contract, the Contractor is free to use any method, means or equipment that is satisfactory to produce the specified work in conformity with the Contract, except as provided above. At the request of the Engineer, the Contractor shall demonstrate that the method, means and equipment chosen will produce the work specified in the Contract in the time allowed under the Contract. The Contractor shall bear all costs and impacts associated with any means, methods and equipment chosen by the Contractor. No suggestion, statement or observation from the Engineer or other Department representatives shall alter this responsibility.

If the Contract specifies a particular method, means or type of equipment for performance of the work, the Contractor must use that method, means or equipment unless the Contractor first requests, in writing, permission to alter the Contract requirement and receives prior written approval from the Engineer.

108-1.06 CONTRACT TIME, EXTENSION OF CONTRACT TIME AND SUSPENSION OF WORK. Contract time will be specified by completion date. All work at a specified location must be completed by the completion date.

108-1.07 FAILURE TO COMPLETE ON TIME. For each calendar day that the work is not substantially complete after the completion date has passed, the Engineer shall deduct the full daily charge corresponding to the original Contract amount shown in Table 108-1 from the remaining value of the Contract.

If no money is due the Contractor, the Department may recover these sums from the Contractor, the Surety or both. These are Liquidated Damages, and not penalties. These charges shall reimburse the Department for additional expenses incurred due to the Contractor's failure to complete the work within the time specified.

**TABLE 108-1:
DAILY CHARGE FOR LIQUIDATED DAMAGES
FOR EACH CALENDAR DAY OF DELAY**

Original Contract Amount		Daily charge
From More Than:	Up to and Including:	
\$0	\$100,000	\$300
\$100,000	\$500,000	\$550
\$500,000	\$1,000,000	\$750
\$1,000,000	\$2,000,000	\$1,000
\$2,000,000	\$5,000,000	\$1,500
\$5,000,000	----	\$2,500

Permitting the Contractor to continue work after the completion date has passed does not waive the Department's right to collected Liquidated Damages under this section.

SECTION 201 CLEARING AND GRUBBING

SPECIAL PROVISIONS **Galena Aggregates Stock Piling**

201-1.01 DESCRIPTION. Clear, grub, remove, and dispose of all vegetation and debris within designated areas of the project, except such objects as are designated to remain or are to be removed under other sections of these Specifications. Preserve from injury or defacement all vegetation and objects designated to remain. Clearing and grubbing and all associated activities are subsidiary to aggregate production pay items and will not be separately measured for payment. Erosion must be kept to a minimum.

201-3.06 DISPOSAL. Dispose of all vegetation and debris removed by clearing or grubbing by incorporation into the vegetative buffer or other approved method. Saleable timber remains the property of the site landowner and may be sold only with written approval from the Engineer.

SECTION 305 STOCKPILED MATERIALS

305-1.01 DESCRIPTION. Produce and stockpile the specified material at the designated stockpile locations shown in Subsection 104-1.01.

305-2.01 MATERIALS. Meet the materials requirements of Section 611 and Section 703.

305-3.01 CONSTRUCTION REQUIREMENTS. Clear and grub the stockpile sites and dispose of all trees, stumps, brush and debris in accordance with the approved Mining and Reclamation Plan. Make the floor of each stockpile site flat and uniform in cross-section, compacted and well-drained. Construct the stockpiles to occupy the smallest feasible areas.

Avoid contamination and segregation of the various sizes of aggregate in each stockpile. Do not push up stockpiled material with a track-type dozer; only rubber-tired vehicles are allowed on the stockpile. Make the completed stockpiles neat and generally tent shaped in form with a single ridge. Stockpiles shall be relatively compact as the stockpile area allows, with side slopes between 1:1 and 2:1.

When using a radial stacker, material must be stockpiled in lifts not greater than 4 feet in thickness to minimize segregation. A static conveyor may not be used for stockpiling. The Engineer may require the Contractor to demonstrate that a finished stockpile is not segregated prior to final acceptance, at the Contractor's expense. If material has noticeably segregated, the Contractor is responsible for any and all corrective actions necessary for it to meet applicable specifications.

The Contractor, in the presence of the Engineer or designee, shall verify material site boundaries and work areas as demarcated on the approved mining and reclamation plan prior to commencement of work. All expenses required for above work to produce the materials specified in this Contract shall be subsidiary to other items of work.

305-4.01 METHOD OF MEASUREMENT. Stockpiled quantities shall be measured at the direction of the Engineer, by one of the following methods:

1. Average End Area, by the Engineer;
2. Three-Dimensional, by the Engineer;
3. Weight, by the Contractor, with a complete series of scale tickets from a certified and calibrated scale, and using a weight-to-volume ratio approved by the Engineer;
4. The Engineer, at his sole discretion, may require the Contractor to conduct a final measurement under the supervision of a registered Professional Land Surveyor, at no additional cost to the Department. A stamped and signed volume report will be required, along with a description of the method used.

No allowance will be made for settlement, swell or shrinkage. If the Contractor chooses to demobilize off of the project site prior to final measurements being taken by the Department the Contractor is responsible for assuring that the quantity and quality of material produced meets those required by the Contract.

305-5.01 BASIS OF PAYMENT. All work involved in preparing the stockpile site is subsidiary.

Payment will be made under:

Pay Item	Location	Item Description	Quantity (CY)
BB	Galena Airport stockpile area	Basic Bid, Crushed Aggregate E-1, stockpiled	1,500
AA	Galena Airport stockpile area	Additive Alternate, Crushed Aggregate E-1, stockpiled	3,500

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

SECTION 641

EROSION, SEDIMENT, AND POLLUTION CONTROL

No SWPPP, DOT material site

641-1.01 DESCRIPTION. This Project is not anticipated to require a SWPPP, as all work in the material site(s) should be planned so that no runoff may discharge to Waters of the U.S. Appropriate Best Management Practices (BMPs) should be employed to ensure that no discharge is possible. In the event that runoff discharges occur, the Contractor shall take immediate action to stop them, and shall notify the Engineer. In the event that runoff cannot be prevented from leaving the site, the Engineer may require the Contractor to design and implement a SWPPP under the Alaska Construction General Permit. All work necessary in this section is subsidiary to the production of aggregate.

SECTION 703

AGGREGATES

703-2.03 AGGREGATE FOR BASE AND SURFACE COURSE. Crushed stone or crushed gravel, consisting of sound, tough, durable pebbles or rock fragments of uniform quality; free from clay balls, vegetable matter or other deleterious matters. Meet the following requirements:

TABLE 703-1

PROPERTY	THRESHOLD	TEST METHOD
L.A. Wear	45% max	AASHTO T96
Degradation Value	45 min	ATM 313
Fracture %	70% min	ATM 305
Liquid Limit	35 max	ATM 204
Plastic Index	10 max	ATM 205
Sodium Sulfate Loss	9 max (5 cycle)	AASHTO T104

Meet the following gradation(s), as determined by AASHTO T27/T11:

TABLE 703-2

Pay Item No.	BB, AA
	Percent Passing by Weight
Sieve	E-1
1.5 in.	
1 in.	100
3/4 in.	70 – 100
1/2 in.	
3/8 in.	50 – 85
No. 4	35 – 65
No. 8	20 – 50
No. 16	
No. 50	15 – 30
No. 200	8 – 15

SPECIAL PROVISIONS

Galena Aggregates Stock Piling

ATTACHMENT A
Bid Submission Cover Sheet

Revised March 7, 2024

PROJECT INFORMATION

ITB NUMBER: _____
PROJECT NAME: _____

BIDDER INFORMATION

Company Name: _____
Address: _____
Tax ID: _____
Alaska Business
License #: _____

CONTACT INFORMATION

Provide contact information for the individual that can be contacted for clarification regarding this bid:

Name _____
Title _____
Address _____
Email _____
Telephone _____

ADDENDA ACKNOWLEDGEMENT

The bidder acknowledges receipt of the following amendments and has incorporated the requirements of such amendments into their bid. Failure to identify and sign for all amendments may subject the bidder to disqualification. The bidder must list all amendments (by number), then initial and date to confirm that you have received and incorporated them into your bid (add more rows as necessary).

Number	Initials & Date

Number	Initials & Date

Number	Initials & Date

CERTIFICATIONS

No	Criteria	Response*
1	The bidder is presently engaged in the business of providing the products and/or services required in this ITB.	<input type="checkbox"/> YES <input type="checkbox"/> NO
2	The bidder confirms that it has the financial strength to provide and/or perform and maintain the services required under this ITB.	<input type="checkbox"/> YES <input type="checkbox"/> NO
3	The bidder accepts the terms and conditions set out in the ITB and agrees not to restrict the rights of the state.	<input type="checkbox"/> YES <input type="checkbox"/> NO
4	The bidder confirms that they can obtain and maintain all necessary insurance as required on this project.	<input type="checkbox"/> YES <input type="checkbox"/> NO
5	The bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.	<input type="checkbox"/> YES <input type="checkbox"/> NO
6	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.	<input type="checkbox"/> YES <input type="checkbox"/> NO
7	The bidder complies with the American with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.	<input type="checkbox"/> YES <input type="checkbox"/> NO
8	The bidder complies with the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government.	<input type="checkbox"/> YES <input type="checkbox"/> NO
9	The bidder complies with the applicable portion of the Federal Civil Rights Act of 1964.	<input type="checkbox"/> YES <input type="checkbox"/> NO
10	The bidder can provide (if requested) financial records for the organization for the past three years.	<input type="checkbox"/> YES <input type="checkbox"/> NO
11	The bidder has not had any contracts terminated by the State of Alaska (within the past five years).	<input type="checkbox"/> YES <input type="checkbox"/> NO
12	The bidder certifies that it is not currently debarred, suspended, proposed for debarment, or declared ineligible for award by any public or federal entity.	<input type="checkbox"/> YES <input type="checkbox"/> NO
13	The offeror certifies that they will not support or participate in a boycott of Israel. Failure to comply with this requirement may cause the state to reject the proposal as non-responsive or cancel the contract.	<input type="checkbox"/> YES <input type="checkbox"/> NO
14	The bidder certifies that they do not have any governmental or regulatory action against their organization that might have a bearing on their ability to provide products and/or services to the State.	<input type="checkbox"/> YES <input type="checkbox"/> NO
15	The bidder certifies, within the last five years, they have not been convicted or had judgment rendered against them for: fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, or tax evasion.	<input type="checkbox"/> YES <input type="checkbox"/> NO
16	The bidder does not have any judgments, claims, arbitrations or suits pending/outstanding against your company in which an adverse outcome would be material to the company.	<input type="checkbox"/> YES <input type="checkbox"/> NO
17	The bidder is not (now or in the past) been involved in bankruptcy or reorganized proceeding.	<input type="checkbox"/> YES <input type="checkbox"/> NO
18	The bidder certifies they comply with the laws of the State of Alaska.	<input type="checkbox"/> YES <input type="checkbox"/> NO
19	The bidder confirms their bid will remain valid and open for at least 90 days.	<input type="checkbox"/> YES <input type="checkbox"/> NO

* Failure to answer or answering "False" may be grounds for disqualification. For any "False" responses, provide clarification (up to 250 word maximum for each "False" clarification) below (add rows as necessary).

Number	Clarification

CONFLICT OF INTEREST STATEMENT

Indicate below whether or not the firm or any individuals that will work on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The procurement officer reserves the right to consider a bid non-responsive and reject it or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity services to be provided by the bidder.

Does the bidder, or any individuals that will work on this contract, have a possible conflict of interest?

☐ YES ☐ NO

** Failure to answer may be grounds for disqualification.*

If "Yes", please provide additional information regarding the nature of that conflict:

FEDERAL REQUIREMENTS

Indicate below all known federal requirements that apply to the bid, it's evaluation, or the resulting contract:

ALASKA PREFERENCES

If you wish to claim any Alaska Preferences, please complete the Alaska Bidder Preference Certification Form that follows the below signature section.

SIGNATURE

This bid must be signed by a company officer empowered to bind the company.

Printed Name

Title

Date

Signature

Bid Schedule - ITB 2524N088
Crushed Aggregate, E-1, Galena Airport

<u>Pay Item</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Description</u>	<u>Required By Date</u>	<u>Unit Price</u>	<u>Extended Price</u>	<u>Completion Date</u>
1	1,500	CUYD	Crushed Aggregate, E-1, Stockpiled, Galena Airport	9/30/2024	\$	\$	
AA	3,500	CUYD	Crushed Aggregate, E-1, Stockpiled, Galena Airport	9/30/2024	\$	\$	
				Total All Items		\$	

Company Name:	
Company Address	
Contact Person:	
Email:	
Phone Number	



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

**REQUIRED CONTRACT PROVISIONS
for
FEDERAL-AID (FAA) CONSTRUCTION CONTRACTS**

A0	GENERAL	A15	ENERGY CONSERVATION REQUIREMENTS
A1	ACCESS TO RECORDS AND REPORTS	A16	EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)
A2	AFFIRMATIVE ACTION REQUIREMENT	A17	FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)
A3	BREACH OF CONTRACT TERMS	A18	LOBBYING AND INFLUENCING FEDERAL EMPLOYEES
A4	BUY AMERICAN PREFERENCE	A19	PROHIBITION of SEGREGATED FACILITIES
A5	CIVIL RIGHTS - GENERAL	A20	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
A6	CIVIL RIGHTS – TITLE VI ASSURANCE	A21	PROCUREMENT OF RECOVERED MATERIALS
A7	CLEAN AIR AND WATER POLLUTION CONTROL	A22	RIGHT TO INVENTIONS
A8	CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS	A23	SEISMIC SAFETY
A9	COPELAND “ANTI-KICKBACK” ACT	A24	TAX DELINQUENCY AND FELONY CONVICTIONS
A10	DAVIS-BACON REQUIREMENTS	A25	TERMINATION OF CONTRACT
A11	DEBARMENT AND SUSPENSION	A26	TRADE RESTRICTION CERTIFICATION
A12	DISADVANTAGED BUSINESS ENTERPRISE	A27	VETERAN’S PREFERENCE
A13	DISTRACTED DRIVING		
A14	DRUG FREE WORKPLACE REQUIREMENTS		

Section A0 GENERAL

[Source: From previous Form 25D-55A]

Procurements made under the Airport Improvement Program, AIP, must adhere to the provisions outlined in [Title 49 CFR Part 18.36](#). This regulation provides for policies and procedures to be applied to typical procurement actions under the AIP, such as construction development, equipment purchases, and selection for professional services (engineering consultants etc.).

The Federal Aviation Administration, (FAA), is not a party to the contracts, the State of Alaska Department of Transportation and Public Facilities, (Department), executes in support of the AIP. The Department is the contractual authority for establishing and administering the contract agreements and is responsible for all contractual matters, including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues.

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 Department and FAA.

Language within brackets [example] is considered as reference or instructional for program administration.

Section A1 ACCESS TO RECORDS AND REPORTS

[Source: 2 CFR § 200.333, 2 CFR § 200.336, FAA Order 5100.38. Include this provision in all contracts and subcontracts.]

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Department, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

Section A2 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

[Mandatory Language. Source: 41 CFR part 60-4, Executive Order 11246. Incorporate in all bids, RFPs, contracts and subcontracts; that exceed \$10,000.]

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard

Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: Is listed on the Invitation to Bid, Form 25D-7; if not listed it is 0.0%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of Alaska.

Section A3 BREACH OF CONTRACT TERMS

[Source: 2 CFR § 200 Appendix II(A). Include in all contracts and subcontracts that exceed \$150,000)]

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The Department will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. The Department reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Department elects to terminate the contract. The Department's notice will identify a specific date by which the Contractor must correct the breach. Department may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Department's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

Section A4.3.1 BUY AMERICAN PREFERENCE

[Source: Title 49 USC § 50101. Also referenced in Department's GCP 60-09, Forms 25D-151, 25D-152, 25D-153, 25D-154, 25D-155, 25D-156. Include in all contracts and subcontracts.]

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA:

1. has issued a waiver for the product;
2. the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or
3. the product is included in the FAA Nationwide Buy American Waivers Issued list.

The Department will include a Certificate of Buy American Compliance for Total Facility (Department Form 25D-151) or a Certificate of Buy American Compliance for Manufactured Products (Department Form 25D-152) in the bid documents.

A Bidder or Offeror must complete and submit the Certificate of Buy American Compliance (Department Form 25D-151 or Form 25D-152) included in the bid documents with their bid or offer. The Department will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

Section A4.3.2 and A4.3.3 CERTIFICATE OF BUY AMERICAN COMPLIANCE

The language in A4.3.2 Certificate of Buy American Compliance for Total Facility (Department Form 25D-151); and in A4.3.3 Certificate of Buy American Compliance for Manufactured Products (Department Form 25D-152); are hereby incorporated into these contract provisions for Buy American Preference.

Section A5.3.1 GENERAL CIVIL RIGHTS PROVISIONS

[Mandatory Language. Source: 49 USC § 47123. Include in all contracts and subcontracts.]

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Section A6.3.1 TITLE VI SOLICITATION NOTICE

[Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include in all contracts and subcontracts]

The Department, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Bidders or Offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Section A6.3.2 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

[Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include in all contracts and subcontracts.]

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the

discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Department or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Department will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies;
and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Department or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Department to enter into any litigation to protect the interests of the Department. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section A6.4.5 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

[Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include in all contracts and subcontracts.]

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of The Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub- recipients and Contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Section A7 CLEAN AIR AND WATER POLLUTION CONTROL

[Source: 2 CFR § 200, Appendix II(G). Include in all contracts and subcontracts that exceed \$150,000.]

The Contractor must agree to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Department immediately upon discovery. The Department assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Section A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

[Mandatory Language. Source: 2 CFR § 200, Appendix II(E). Use for Construction, Equipment and Professional Services contracts in excess of \$100,000.]

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, including watchmen and guards, 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 clause, 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 clause, 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 clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Department 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 clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor 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 clause.

Section A9 COPELAND "ANTI-KICKBACK" ACT

[Mandatory Language. Source: 2 CFR § 200, Appendix II(D), 29 CFR Parts 3 & 5. Include in contracts and subcontracts exceeding \$2,000.]

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Department, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Department must report any violations of the Act to the Federal Aviation Administration.

Section A10 DAVIS-BACON REQUIREMENTS

[Mandatory Language. Source: 2 CFR § 200, Appendix II(D), 29 CFR Part 5. Include in contracts and subcontracts exceeding \$2,000.]

1. Minimum Wages

- (i) 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 the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent 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)(iv) 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 Part 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 (1)(ii) 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 easily be seen by the workers.

- (ii) (A) 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:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) 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.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs

(1)(ii) (B) or (C) of this paragraph, 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.

(iii) 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.

(iv) 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 Federal Aviation Administration or the Department 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 work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, or Department, 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.

(i) 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 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 that 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 that show the costs anticipated or the actual costs 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.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Department, , for transmission to the Federal Aviation Administration. 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 www.dol.gov/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 Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Department, for transmission to the Federal Aviation Administration, the Contractor, 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 Department.

(B) 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:

- (1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;
- (2) Each laborer and 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;
- (3) 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.

(C) 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)(ii)(B) of this section.

(D) 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.

- (iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Department, the Federal Aviation Administration 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 Federal agency may, after written notice to the Contractor, or Department, 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.

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

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

- (ii) Trainees. 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 that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that 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.
- (iii) 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.

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 in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses 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 Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section 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.

- (i) 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).
- (ii) 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).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

Section A11.3.1 CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

[Source: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5. Use for any contract, regardless of tier, that is awarded by a Contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.]

By submitting a bid/proposal under this solicitation, the Bidder or Offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal Department or agency from participation in this transaction.

Section A11.3.2 CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

[Source: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5. Use for any contract, regardless of tier, that is awarded by a Contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.]

The successful Bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful Bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate of Offeror/Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

Section A12.3.1 DISADVANTAGED BUSINESS ENTERPRISE - SOLICITATION LANGUAGE (RACE CONSCIOUS)

[Source: 49 CFR §26 and 49 CFR §26.53. Department GCP-120. Requires a Department's solicitation to address what a Contractor must submit on proposed (Race Conscious) DBE participation. This language is not required for projects where DBE participation is by race-gender neutral means.]

Information Submitted as a matter of Bidder responsiveness:

The Department's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Department's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal; evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation within 5 days after bid opening, or for negotiated agreements submit with the proposal documents, as a condition of bid

responsiveness.

Section A12.3.2 DISADVANTAGED BUSINESS ENTERPRISE - SOLICITATION LANGUAGE (RACE/GENDER NEUTRAL)

[Source: 49 CFR §26.53. Department GCP-120.Contractor]

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Department to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Department encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Section A12.3.3 DISADVANTAGED BUSINESS ENTERPRISES (Program Goals)

[Mandatory Language. Source: 49 CFR §26, Department G-120. Use for projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 and Department GCP 80-01, establish mandatory language for Contractor assurance and prompt payment.]

Contract Assurance (§ 26.13) - 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 Department of Transportation 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 Department deems appropriate, which may include, but is not limited to:

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

Prompt Payment (§26.29 and Department GCP 80-01) – The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than eight (8) working days from the receipt of each payment the prime Contractor receives from the Department. The prime Contractor agrees further to return retainage payments to each subcontractor within eight (8) working days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Department. This clause applies to both DBE and non-DBE subcontractors.

Section A13 DISTRACTED DRIVING - TEXTING WHEN DRIVING

[Source: Executive Order 13513, DOT Order 3902.10. Use for all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).]

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Department encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

Section A14 DRUG FREE WORKPLACE REQUIREMENTS

[(A15 in Federal) Source: 49 CFR part 32, Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended)]

The Drug-Free Workplace Act of 1988 requires some Federal contractors and all Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does **not** apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

Section A15 ENERGY CONSERVATION REQUIREMENTS

[(A14 in Federal) Source: 2 CFR § 200, Appendix II(H). Use for all contracts and subcontracts.]

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act

(42 USC 6201*et seq*).

Section A16.3.1 EQUAL OPPORTUNITY CLAUSE (EEO Contract Clause)

[Mandatory Language. Source: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246. Department Form 25A-301 and 25A-304. Use for any contract or subcontract when the amount exceeds \$10,000.]

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section A16.3.2 EQUAL EMPLOYMENT OPPORTUNITY SPECIFICATION

The language in Department Form 25A-301 is similar to the FAA language in A16.3.2 EEO specification. The language in Department Form 25A-301 is hereby incorporated into these contract provisions for EEO.

Section A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

[Source: 29 USC § 201, et seq. All consultants, sub-consultants, Contractors and subcontractors employed under this federally assisted project must comply with the FLSA.]

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of

29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Section A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

[Mandatory Language. Source: 31 USC § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II(J); 49 CFR part 20, Appendix A. Consultants and Contractors that apply or bid for an award of \$100,000 or more must certify to these paragraphs by signing the bid documents.]

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Section A19 PROHIBITION OF SEGREGATED FACILITIES

[Source: 41 CFR § 60. Include in all contracts and subcontracts subject to EEO.]

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

Section A20 OCCUPATION SAFETY AND HEALTH ACT OF 1970

[Source: 20 CFR part 1910. Include in all contracts and subcontracts.]

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Section A 21 PROCUREMENT OF RECOVERED MATERIALS

[Source: 2 CFR § 200.322, and 40 CFR part 247.]

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- 2) The Contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products. Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

Section A 22 RIGHTS TO INVENTIONS

[Source: 2 CFR § 200, Appendix II(F), and 37 CFR §401.]

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Department in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

Section A23 SEISMIC SAFETY

[Source: 49 CFR part 4. Clause used for construction of new buildings or structural addition to existing buildings.]

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

Section A24 TAX DELINQUENCY AND FELONY CONVICTIONS

[Source: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts. DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions. Include in all contracts and subcontracts.]

CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The

applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications – Use Department Form 25D-159 for signed certification

- 1) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is () is not () a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Department has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the Department about its tax liability or conviction to the Department, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Section A25.3.1 TERMINATION FOR CONVENIENCE (Construction & Equipment Contracts)

[Source: 2 CFR § 200 Appendix II(B). Department GCP 80-09. The Department must include a clause for termination for convenience on all contracts and subcontracts in excess of \$10,000.]

The Department may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Department. Upon receipt of a written notice of termination, except as explicitly directed by the Department, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Department all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Department to protect and preserve property and work related to this contract that Department will take possession.

Department agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;

- 3) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with
- 4) Subcontractors and Suppliers; and
- 5) reasonable and substantiated expenses to the Contractor directly attributable to Department's termination action

The Department will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Department's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract in Department Standard Specification Section GCP 80-09.

Section A 25.3.2 TERMINATION FOR DEFAULT (Construction)

[FAA Mandatory Language for Construction Contracts. Source: 2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09. Department Section GCP 80-08.]

FAA Advisory Circular, 80-09 Default and termination of contract.

The Contractor shall be considered in default of his or her contract and such default will be considered as cause for the Department to terminate the contract for any of the following reasons if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Engineer consider the Contractor in default of the contract for any reason above, the Engineer shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Department's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Department will, upon written notification from the Engineer of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Department may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Department the amount of such excess.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract in the Department's Standard Specifications Section GCP 80-08.

Section A26 TRADE RESTRICTION CERTIFICATION

[Mandatory Language. Source: 49 USC § 50104, 49 CFR part 30. Include in all contracts and subcontracts.]

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Department if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with

49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- (3) who incorporates in the public works project any product of a foreign country on such USTR list.

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 provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Department cancellation of the contract or subcontract for default at no cost to the Department or the FAA.

Section A 27 VETERAN'S PREFERENCE

[Source: 49 USC § 47112(c).]

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier Contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

END



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
REQUIRED CONTRACT PROVISIONS
for
FEDERAL-AID (FHWA) CONSTRUCTION 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."