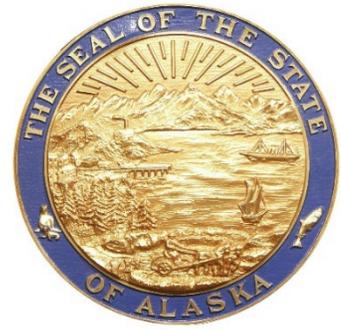


STATE OF ALASKA INVITATION TO BID (ITB)



WESTERN DISTRICT AGGREGATE STOCKPILING FEDERALLY FUNDED ITB 2526H133

ISSUED MARCH 17, 2026

The Department of Transportation and Public Facilities, Division of Program Management and Administration, is soliciting bids for Western District Aggregate.

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

- (1) the bidder has a valid Alaska business license or will obtain one prior to award of any contract resulting from this ITB. If the bidder possesses a valid Alaska business license, the license number must be written below or one the following forms of evidence must be submitted with the bid:
 - a canceled check for the business license fee;
 - a copy of the business license application with a receipt date stamp from the State’s business license office;
 - a receipt from the State’s business license office for the license fee;
 - a copy of the bidder’s valid business license;
 - a sworn notarized affidavit that the bidder has applied and paid for a business license;
- (2) the price(s) submitted was arrived at independently and without collusion, under penalty of perjury, and that the bidder is complying with:
 - the laws of the State of Alaska;
 - the applicable portion of the Federal Civil Rights Act of 1964;
 - the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
 - the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
 - the bid will remain open and valid for at least 90 days;
 - all terms and conditions set out in this Invitation to Bid (ITB).

If a bidder does not hold an Alaska Business License (1) at the time designated in the ITB for opening the state will disallow the Alaska Bidder Preference. Bids must also be submitted under the name as appearing on the bidder’s current Alaska business license in order to receive the Alaska Bidder Preference. If a bidder fails to comply with (2) of this paragraph, the state may reject the bid, terminate the contract, or consider the contractor in default.

<p>DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</p>	
<p>DIVISION OF PROGRAM MANAGEMENT AND ADMINISTRATION</p>	<p>COMPANY SUBMITTING BID</p>
<p>Signed by:  <small>0F38D8049495442...</small></p>	<p>AUTHORIZED SIGNATURE</p>
<p>PROCUREMENT OFFICER:</p> <p>SARAH CONLON</p> <p>PHONE: (907) 451-2222</p>	<p>PRINTED NAME</p>
<p>EMAIL: SARAH.CONLON@ALASKA.GOV</p>	<p>DATE</p>

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE ITB

The Department of Transportation and Public Facilities, Division of Program Management and Administration, is soliciting bids for Aggregate Stockpile to be delivered to the Nome, Alaska area. See the Bid Schedule for location details.

SEC. 1.02 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **10:00 AM** Alaska Time on **April 09, 2026**, 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. 1.03 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 at least ten days before 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. 1.04 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. 1.05 RETURN INSTRUCTIONS

Bidders may 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:

If using U.S. mail or a delivery service, please use the following address:

Department of Transportation and Public Facilities
Division of Program Management and Administration
Attention: Sarah Conlon
Invitation to Bid (ITB) Number: 2526H133
ITB Title: Western District Aggregate Stockpiling
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 907-451-1625 to confirm that the entire bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

SEC. 1.06 ASSISTANCE TO BIDDERS WITH A DISABILITY

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a bid should contact the Procurement Officer no later than ten days prior to the closing of the bid to make any necessary arrangements.

SEC. 1.07 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. 1.08 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. 1.09 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		03/17/2026
Deadline for Receipt of Bids / Bid Due Date	10:00AM	04/09/2026
Bid Evaluations Complete		04/09/2026
Notice of Intent to Award		04/10/2026
Contract Issued		04/21/2026

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 & Public Facilities, 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. 1.10 ALTERNATE BIDS

Bidders may only submit one bid for evaluation. In accordance with 2 AAC 12.830 alternate bids (bids that offer something different than what is asked for) will be rejected.

SEC. 1.11 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. 1.12 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.

SEC. 1.13 FEDERAL CONTRACT PROVISIONS

Required Contract Provisions for Federal-Aid Contracts, Form Federal Highway Administration (FHWA) pages 1 through 14 is attached to this document. This contract incorporates the provisions by reference, with the same force and effect as if they were given in full text. The Contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

CONTRACT FUNDING:

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

STATEMENT OF FINANCIAL ASSISTANCE

Statement of Financial Assistance: This Procurement is subject in part to financial assistance grants agreement between the State of Alaska and the Federal Highway Administration (FHWA).

AS 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 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

SECTION 2. SCOPE OF WORK AND CONTRACT INFORMATION

SEC. 2.01 SCOPE OF WORK

The intent of the Contract is to provide for the production, transport and/or stockpiling of processed aggregate, as described herein.

SEC. 2.02 SPECIFICATIONS AND SPECIAL PROVISIONS

ENGINEER. The authorized representative of the Contracting Officer who is responsible for administering the Contract shall be Artem Ruppert, or his designee; phone 907-451-5285 or email artem.ruppert@alaska.gov. This project takes place in the Western Maintenance and Operations District in Nome, Alaska.

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 detail, quantity, royalty to be paid by Contractor, and completion date(s) required for each location(s) are as follows:

TABLE 104-1

Material Site No.	Location	Quantity (CY)	Royalty	Completion Date
N/A*	Nome-Teller Highway mile 3.5 (Nome DOT M&O yard)*	1,000	N/A*	5/31/2026 (B-Chips & C-Chips)
N/A*	Nome-Teller Highway mile 3.5 (Nome DOT M&O yard)*	4,000	N/A*	6/15/2026 (E-1 & 3" minus)

*This is a stockpile site only. Material shall be mined and processed elsewhere and hauled to this location. The contractor may propose an alternate delivery location within 10 road miles of this site. An alternate location may be rejected or accepted at the Engineer's sole discretion.

For material quantity breakdown see Section 305-5.01 Basis of Payment. Material gradations are listed in Tables 703-2, 703-6 and 703-7.

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.

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 the Bid Schedule 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 the Bid Schedule. 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 reseeding 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 12/31/2029. 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 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;
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.

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.

107-1.11 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 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;
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.

107-1.12 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 under Subsection 643-3.07, [sshc2020.pdf](#). 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 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 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.

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.

SECTION 201 CLEARING AND GRUBBING

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:

Lot 1 Nome

Pay Item	Location	Item Description	Quantity (CY)
1	Nome-Teller Highway mile 3.5	Crushed Aggregate grading E-1	3,000
2	Nome-Teller Highway mile 3.5	Screened Aggregate 3" minus	1,000
3	Nome-Teller Highway mile 3.5	B-Chips	500
4	Nome-Teller Highway mile 3.5	C-Chips	500

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

AGGREGATE SPECIFICATIONS

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. 1	
	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

703-2.07 SELECTED MATERIAL (PIT RUN). Aggregate containing no muck, frozen material, roots, sod or other deleterious matter. Meet the following requirements:

TABLE 703-5

PROPERTY	THRESHOLD	TEST METHOD
L.A. Wear	50% max	AASHTO T96
Degradation Value	40 min	ATM 313
Liquid Limit	55 max	AASHTO T89
Plastic Index	6 max	AASHTO T90

Meet the following gradations, as determined by AASHTO T27/T11:

TABLE 703-6

Pay Item No. 2	
	Percent Passing by Weight
Sieve	3" Minus
6 in.	
3 in.	100
2 in.	
No. 4	
No. 200	0 – 6

Meet the following gradations, as determined by AASHTO T27/T11:

TABLE 703-7
Asphalt Surface Treatment Percent Passing by Weight

Pay Item No.	3	4
	Percent Passing by Weight	Percent Passing by Weight
Sieve	B-Chips	C-Chips
1 in.	100	
3/4 in.	90 – 100	100
1/2 in.	20 – 55	90 – 100
3/8 in.	0 – 15	40 – 75
No. 4		0 – 15
No. 8		0 – 5
No. 200	0 - 1	0 – 1

SEC. 2.03 CONTRACT TERM

The length of the contract will be from the date of award, approximately 4/21/2026, through 6/15/2026. This contract contains no options to renew.

Unless otherwise provided in this ITB, the State and the successful bidder/contractor agree: (1) that any extension of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) the procurement officer will provide notice to the contractor of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

SEC. 2.04 CONTRACT TYPE

This solicitation will result in a Firm Fixed Price contract.

SEC. 2.05 PAYMENT FOR STATE PURCHASES

No payment will be made until the contract is approved by the Commissioner of the Department of Transportation & Public Facilities or the Commissioner's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. The state is not responsible for

and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

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.

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 or person appointed by the Department of Transportation & Public Facilities, Division of Program Management and Administration.

SEC. 2.08 CONTRACT PERFORMANCE LOCATION

The location(s) the work is to be performed, completed, and managed is in Nome, Alaska.

Travel to other locations will not be required.

By signature on their bid, the bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the bidder cannot certify that all work will be performed in the United States, the bidder must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of bids.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

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

SEC. 2.09 THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED

Because of the additional administrative and accounting time required of the state when third party financing agreements are permitted, they will not be allowed under this contract.

SEC. 2.10 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. If a bidder intends to use subcontractors, the bidder must identify in the bids the names of the subcontractors and the portions of the work the subcontractors will perform.

If a bid with subcontractors is selected, the bidder must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

- complete name of the subcontractor;
- complete address of the subcontractor;
- type of work the subcontractor will be performing;
- percentage of work the subcontractor will be providing;
- evidence that the subcontractor holds a valid Alaska business license; and
- a written statement signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

A bidder's failure to provide this information, within the time set, may cause the state to consider their bid non-responsive and reject it.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

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 AND DELIVERY REQUIREMENTS

The F.O.B. points are various locations within the State of Alaska as specified on the "Bid Schedule".

The contractor will be required to prepare the items for shipping and to ship them to the ultimate destination specified in the State's order. Ownership of and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the State. The cost of all shipping and delivery must be included in the bid price.

DELIVERY

Bid price must include freight to the final destination. The State will not provide equipment and labor to off-load product at time of delivery. The contractor shall determine the type of vehicle used for all deliveries except those otherwise specified on the Bid Schedule.

Delivery of the "Firm Quantity" orders must be made within the timeframe specified in the "Bid Schedule" with no exceptions. The Bid Schedule identifies two dates for each location. These dates represent a "no sooner

than” and “no later than” delivery requirements. Delivery MUST be made within this time period. By signature on page one of the ITB, the bidder guarantees delivery to each location within the timeframe set forth in the “Bid Schedule”.

PROOF OF DELIVERY OR WEIGHT TICKETS

For all bulk product deliveries, weight tickets are required and must be presented to the receiving on-site DOT/PF representative for signature at the time of delivery. Only computer generated weight tickets from State certified weigh scales will be accepted. For each delivery, the weight ticket must clearly identify the destination, the truck and driver, the gross weight, tare weight and net weight of each vehicle utilized in the delivery. Handwritten tickets will not be accepted. Double-draft weighing of vehicles is illegal per AS 45.75.050(d) and will not be accepted. Reference: <http://www.dot.alaska.gov/mscve/>.

For all bagged product deliveries, a Proof of Delivery (POD) must be presented to the receiving on-site DOT/PF representative at the time of delivery. Weight tickets and POD are required to identify the receiver’s signature and printed name. The contractor’s delivering agent is responsible to insure the printed name is legible. Shipments will be refused if POD or weight tickets are not presented at time of delivery.

DELIVERY TIME

The elapsed time between the time the state places an order and the time that order is actually shipped from the contractor's place of business must be entered in space provided under "BID SCHEDULE". This processing time is to remain constant throughout the life of the contract(s).

DELIVERY CONFIRMATION

Bidders must obtain written confirmation from both the supplier and the shipper that the items offered are scheduled for production and transport in sufficient time to meet scheduled delivery dates. A copy of the supplier’s and shipper’s confirmation may be included with the bid or submitted within 30 calendar days of the State’s request. The bidder’s failure to provide these confirmation documents as required will cause the State to consider the bid non-responsive and reject the bid.

ADVANCED NOTICE OF DELIVERY

The contractor must provide the State with 48 hours advance notice of each delivery. Failure to provide advance notice may delay the State’s ability to accept the shipment. The point of contact for delivery shall be Artem Ruppert, phone: 907-451-5285 email: artem.ruppert@alaska.gov.

After normal business hours, most State maintenance yards are unattended, yet secured and therefore inaccessible. Therefore, deliveries will only be accepted at the final destination during normal State business hours; Monday through Friday, excluding State holidays, 8am to 4:30pm unless other prior arrangements are made with the State’s designated contact as instructed above. All stations must be available for deliveries with no penalty to the contractor during those designated normal business hours. All deliveries to be completed after normal business hours must be pre-approved by the State’s designated contact for that destination. However, prior approval to deliver outside normal business hours is not guaranteed due to lack of available personnel or other scheduling conflicts. Any additional costs (personnel and equipment) incurred by the State to accommodate deliveries made outside normal business hours will be solely at the contractor’s expense. Note: Overtime wages and minimum call out requirements are subject to the State Office of Personnel and union

bargaining agreements. Disclosure of the approximate amount of additional costs may be acquired upon request from the State's designated contact at the time the arrangement is made. Upon the State's request, the contractor shall submit in writing their acceptance of responsibility for any additional costs and their intended delivery schedule.

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 EQUIPMENT INSPECTION

Equipment offered (including for lease) may be subject to inspection and approval by the state prior to the award of the ITB. The equipment and attachments must be in good repair and capable of performing the work for which they were designed.

SEC. 2.16 NEW EQUIPMENT

Equipment offered in response to this ITB must be new equipment. New equipment means equipment that is currently in production by the manufacturer and is still the latest model, edition or version generally offered. The equipment must be warranted as new by the manufacturer and may not have been used for any purpose, other than display (not demonstration), prior to its sale to the state. The state will not accept remanufactured, used, or reconditioned equipment. It is the contractor's responsibility to ensure that each piece of equipment delivered to the state complies with this requirement. A contractor's failure to comply with this requirement will cause the state to seek remedies under breach of contract.

SEC. 2.17 LIQUIDATED DAMAGES

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 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.

SEC. 2.18 SHIPPING DAMAGE

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

SEC. 2.19 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. 2.20 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. 2.21 BILLING INSTRUCTIONS

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. 2.22 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. 2.23 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. 2.24 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:

- B. the laws of the State of Alaska;
- C. the applicable portion of the Federal Civil Rights Act of 1964;
- D. the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
- E. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government and certifies that programs, services, and activities provided to the general public on behalf of the State under a contract resulting from this solicitation comply with the Americans with Disabilities Act of 1990, 28 CFR, Part 35, Subpart B 35.130;
- F. all terms and conditions set out in this ITB;
- G. the price(s) submitted was arrived at independently arrived and without collusion, under penalty of perjury; and
- H. 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

Each bid shall include a statement indicating whether the company or any individuals working 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 of the contract to be performed by the bidder.

SEC. 3.02 BID GUARANTEE – PERFORMANCE BOND – INDIVIDUAL SURETY DEPOSIT

Bid Guarantee

Bids must be accompanied by a bid guarantee in the form of a Certified or Cashier's check in the amount of \$5,000.00 made payable to the State of Alaska. Bid Bonds will not be accepted. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond or Individual Surety. If the successful bidder fails to deliver the required Performance Bond or Individual Surety within fourteen (14) days from the date the bidder receives notice from the procurement officer, the bid guarantee will

be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after the award has been made. The Bid Guarantee shall be submitted under the name appearing on the bidder's current Alaska business license.

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

Performance Bond

Any posted performance bond will ensure performance over the entire term of the contract. In the event it becomes necessary for the State to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly perform and complete all obligations and work under said contract in accordance with the terms of the performance bond. The performance bond is to be in the total contract value (applicable only to individual firm quantity lots awarded in excess of \$200,000.00). Performance Bonds shall be submitted under the name appearing on the bidder's current Alaska business license.

Individual Surety Deposit

In lieu of a performance and payment bond, a successful bidder may post an individual surety to ensure performance over the entire term of the contract. In the event it becomes necessary for the State to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the individual surety will be declared as liquidated damages and become due and payable to the State. By signature on this ITB, the bidder acknowledges this condition and voluntarily relinquishes any and all claims to the entire individual surety. The individual surety shall be submitted under the name appearing on the bidder's current Alaska business license. The individual surety may be in any of the following forms:

- **CERTIFIED OR CASHIER'S CHECK:** A certified or cashier's check, made payable to the State of Alaska in the amount of the total contract value (applicable only to individual firm quantity lots awarded in excess of \$200,000.00).

OR

- **SPECIAL NOTICE ACCOUNT OR CERTIFICATE OF DEPOSIT:** A special notice account book or certificate of deposit, made payable to the State of Alaska in the amount of the total contract value (applicable only to individual firm quantity lots awarded in excess of \$200,000.00).

Failure to supply this document within the time required will cause the State to declare the bidder non-responsive and 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 by Single Lot to the lowest responsive and responsible bidder. 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.

SEC. 4.06 APPLICATION OF PREFERENCES AND FUNDING SOURCE

This project is being funded using Federal funds. FHWA Terms & Conditions are attached and will supersede State terms & conditions in the event of a conflict. State preferences will not apply to this solicitation.

BUILD AMERICA, BUY AMERICA ACT (BABA)

Bipartisan Infrastructure Law – Build America, Buy America Act (BABA) (BIL, div. G, § 70901-27)
BABA Section 70914 includes a Buy America preference that all Federal agencies must apply to any Federal financial assistance program for infrastructure that is not already subject to existing Buy America requirements for the relevant categories.

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 SPECIFICATIONS

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

SEC 5.07 ITEM UPGRADES

The state reserves the right to accept upgrades to models on the basic contract when the upgrades improve the way the equipment operates or improve the accuracy of the equipment. Such upgraded items must be at the same price as the items in the basic contract.

SEC 5.08 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 5.09 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 5.10 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 5.11 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 5.12 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 5.13 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 5.14 DISCLOSURE OF BID CONTENTS

This section governs the ownership, return, and disclosure of any offer or other record a bidder submits in response to this invitation to bid. (Herein, any reference to “Record” includes all such records and the offer; any reference to “Law” includes any federal or State of Alaska (State) law, including any court or administrative order or rule.)

1. All Records belong to the State.
2. The State has sole discretion regarding whether to return any Record. In exercising this discretion, the State will comply with all Laws.
3. Unless a notice of intent to award is issued, the State will, to the extent permitted by Law, consider all Records confidential and not subject to the Alaska Public Records Act (APRA).
4. If, and when a notice of intent to award is issued, the State will consider nonconfidential any Record unless, at the time of submission, the bidder undertook the following protective measures:
 - a. marked information confidential;
 - b. for any information marked confidential, identified the authority that makes that specific information confidential; and
 - c. committed, in writing, to explain in detail, including with affidavits and briefs, why each authority applies in any court or administrative proceeding in which any nondisclosure is challenged.
5. If the bidder did not undertake each protective measure, the State will not consider any information in a Record confidential: the State will disclose the entire Record without any redaction in response to an APRA or other request or, if it chooses, in the absence of a request and the State will disclose the entire Record without notifying the bidder.
6. If the bidder undertook each protective measure, the State will withhold the information marked confidential to the following extent:
 - a. the State agrees that the Law protects the information; and
 - b. if the nondisclosure is challenged, the bidder fulfills its commitment to explain, including with affidavits and briefs, how each authority applies to the information marked confidential.
7. The State will only notify a bidder of a request for the Record and of a planned release if the bidder undertook each protective measure, but the State disagrees that the marked information is protected. If there is such a disagreement, then before releasing the Record, the State will, to the extent permitted by Law and practicable, notify the bidder that it will disclose the information unless the bidder convinces the State not to or obtains an order prohibiting disclosure.

SEC 5.15 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 5.16 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 5.17 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 5.18 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 5.19 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 5.20 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 provide 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. 5.21 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. 5.22 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. 5.23 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. 5.24 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 at least ten days 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) Bid Schedule
- 2) Bid Submission Cover Sheet for Federal Solicitations
- 3) FHWA Federal Terms and Conditions
- 4) Certificate of Buy America Act Compliance
- 5) Material Origin Certificate

Documents Required at Time of Bid Opening:

- 1) Completed ITB - Page 1 of this solicitation
- 2) Bid Schedule - Attachment 1
- 3) Bid Submission Cover Sheet for Federal Solicitations - Attachment 2
- 4) Bid Guarantee Certified check or Cashier's check in the amount of \$5,000.00 made out to State of Alaska per section 3.02.
- 5) Certificate of Buy America Act Compliance filled out per section 4.06 – Attachment 4
- 6) Material Origin Certificate Attachment 5

Documents Required Prior to Contract Award:

- 1) Current certificate of insurance per section per section 2.29
- 2) Current Alaska Business License per section 5.02
- 3) Performance Bond per section 3.02

Bid Response Checklist:

- 1) Completed Page One
- 2) Completed Bid Schedule (Attachment 1)
- 3) Completed Bid Submission Cover Sheet for Federal Solicitations (Attachment 2)
- 4) Completed Certificate of Buy America Act Compliance form 25D-62 (Attachment 4)
- 5) Completed Material Origin Certificate form 25D-60 (Attachment 5)
- 6) All Mandatory Return Amendments

Attachment 1

BID SCHEDULE

All lots are to be delivered F.O.B to the Material Site Locations as specified on this bid schedule and be completed by the dates listed by pay item per lot.

Lot 1 Nome Area

Pay Item	Location	Item Description	Quantity (CY)	Unit	Completion Date	Unit Price	Extended Price
1.1	Nome-Teller Highway mile 3.5	Crushed Aggregate grading E-1	3,000	CY	6/15/2026	\$	\$
1.2	Nome-Teller Highway mile 3.5	Screened Aggregate 3" minus	1,000	CY	6/15/2026	\$	\$
1.3	Nome-Teller Highway mile 3.5	B-Chips	500	CY	5/31/2026	\$	\$
1.4	Nome-Teller Highway mile 3.5	C-Chips	500	CY	5/31/2026	\$	\$
Total Price for Lot – 1						\$	

*This is a stockpile site only. Material shall be mined and processed elsewhere and hauled to this location. The contractor may propose an alternate delivery location within 10 road miles of this site. An alternate location may be rejected or accepted at the Engineer's sole discretion.

Please note that the price is inclusive of all shipping and handling and any fees associated with delivery.

The bidder's failure to provide the following information may cause the bid to be rejected as nonresponsive:

1) GUARANTEED DELIVERY BY THE DATES INDICATED ON THE BID SCHEDULE.

Bids indicating deliveries after the dates indicated on the bid schedule will be rejected.

Submitted by:

Business Name: _____

Address: _____

Contact: _____

Phone: _____

Email: _____

ATTACHMENT 2 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?

<input type="checkbox"/> YES <input type="checkbox"/> 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:

SIGNATURE

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

Printed Name _____

Title _____

Date _____

Signature _____



**for
FEDERAL-AID (FHWA) CONTRACTS**

FHWA-1273 – Revised October 23, 2023

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

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

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, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

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

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

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

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

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

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

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

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

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

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

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

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

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

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

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

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

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

(3) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

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

a. *Apprentices* (1) *Rate of pay*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits*. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

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

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

b. *Equal employment opportunity*. The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

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

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

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

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

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

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

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

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

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

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

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

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

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

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

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

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

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

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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



ATTACHMENT 4

Certificate of Buy America Act Compliance

Federal-Aid Highway Contracts

Project Name and Number ¹	
Pay Item No. / Pay Item Description ²	Does 25D-60 need to be updated? <input type="checkbox"/> Yes <input type="checkbox"/> No

PRODUCT OR CONSTRUCTION MATERIAL ³	QUANTITY ⁴	NON-DOMESTIC OR UNKNOWN ORIGIN ⁵	DOMESTIC ⁵	PREDOMINANTLY IRON OR STEEL OR BOTH ⁶	CONSTRUCTION MATERIAL ⁷	MANUFACTURED PRODUCT ⁸	PROJECT SPECIFIC WAIVER ⁹	COST OF NON-DOMESTIC ORIGIN ¹⁰
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

As the Supplier's authorized representative, I certify that, as of the date of my signature below, all iron or steel products, all products predominantly of iron or steel or a combination of both, all manufactured products, and all construction materials listed and classified above as domestic meet the domestic requirements of 23 CFR §635.410 and 2 CFR Part 184. If an iron or steel product, a product predominantly of iron or steel or a combination of both, a manufactured product, or construction materials are non-domestic, then I further certify that the cost shown above is a true and accurate value of the product and/or material including shipping to the project location.

As the Contractor's authorized representative, I certify that the above products and/or materials will be incorporated into the project, and I further certify that the cumulative amount of all non-domestic iron or steel products, products predominantly of iron or steel or a combination of both, manufactured products, and construction materials do not exceed, as appropriate, the minimal use allowance under 23 C.F.R. §635.410(b)(4) or the de minimis allowance under the USDOT's "Waiver of Buy America Requirements for De Minimis Costs and Small Grants" published in the Federal Register at 88 FR 55817.

I acknowledge that submission of false or misleading statement information may result in civil and criminal penalties.

Supplier's Authorized Representative Signature

Date

Printed Name

Position

Prime Contractor's Authorized Representative Signature

Date

Printed Name

Position

Form 25D-62 Instructions:

1. Enter the project name, state number, and federal number as they appear on the contract.
2. Enter the pay item number and description as they appear on the bid schedule.
3. Use a description that allows identification of the product of material in the retained documentation and at the project site.
4. Do not enter a generic description like “all required”. Use a quantity that matches the retained documentation used to certify cost on Form 25D-60.
5. Choose either domestic or non-domestic as required by Section 106-1.01, Buy America Provision
6. Check this column if product is a Manufactured Product as defined in Section 106-1.01, Buy America Provision
7. Check this column if product is a Construction Materials as defined in Section 106-1.01, Buy America Provision
8. Enter the cost of the non-domestic product(s) for the associated quantity. Provide an updated Form 25D-60 when the non-domestic material counts towards the contract allowance.
9. Keep a copy of the waiver with the retained documentation when the non-domestic material is subject to an applicable waiver.
10. Enter the total cost of the products/materials that are non-domestic.
11. Attach additional form sheets if necessary to include more than one page of products and materials.



ATTACHMENT 5

MATERIAL ORIGIN CERTIFICATE

Federal-Aid Highway Contracts

Project Name and Number: _____

FOREIGN CONSTRUCTION MATERIALS AND PRODUCTS ¹	COUNTRY OF ORIGIN	COST ²

I certify under penalty of law that all construction materials, steel products, and iron products to be furnished for this project are manufactured in the United States, and comply with the requirements of Public Law No. 117-58, Sections 70901-52, 23 CFR 635.410, and Contract subsection 106-1.01, Buy America Provisions; except for those foreign construction materials and products that are listed on this page or on a separate and clearly identified attachment.³ The term “manufactured in the United States” is defined in Contract subsection 106-1.01, Buy America Provision.

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

Authorized Corporate Signature

Date

Printed Name

Contractor’s Company Name

Position Title

Form 25D-60 Instructions:

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