



CONTRA COSTA  
transportation  
authority

To: Potential Proposals

Subject: Contra Costa Transportation Authority RFP 16-4  
Construction Contract Boilerplate – Sample

As requested at the pre-proposal meeting dated June 30, 2016, a sample boilerplate of the construction contract is attached for your information and use. The sample boilerplate is from the San Pablo Dam Road Interchange Improvements project. Please be mindful that each contract has its own specific contractual requirements and the provided sample is being posted for informational purposes and to be used in preparing the proposal only, if necessary, and at your own discretion.

CCTA

ITEM CODE	ITEM DESCRIPTION	APPLICABLE SECTION
860151A	SIGNAL AND LIGHTING (TEMPORARY) (LOCATION 1, STAGE 2)	86
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869002A	EMERGENCY VEHICLE PREEMPTION SYSTEM	86
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**Add to section 1-1.07B:**

**Authority:** The Contra Costa Transportation Authority (CCTA), including its authorized officers, employees, agents, consultants and volunteers.

**Authority Indemnitees:** The Authority and the indemnitees listed in Section 7-1.05B and their respective successors and assigns, governing bodies or boards, board members, officers, directors, agents, employee, consultants and subconsultants.

**Caltrans or Department of Transportation:** Department of Transportation as defined in St & Hwy Code § 20 and authorized in St & Hwy Code § 90; its authorized representatives.

**Contract Approval Date:** The date the fully executed contract is approved by the Authority as evidenced by the date entered by Authority's counsel on the signature document.

**Contract Award Date:** The effective date the contract is awarded by the Authority as evidenced by a resolution approved by the Authority's Board of Directors.

**Inspector:** The engineering or technical personnel authorized to act as agents or representatives for the Engineer in inspection of work covered by the contract, limited to the particular duties entrusted to them.

**Oversight Engineer:** The assigned Caltrans representative duly authorized to oversee work covered by the contract. The Oversight Engineer will have authority to stop work at any time there is a risk to the traveling traffic or pedestrians or when the work is performed in an unsafe manner. The Oversight Engineer has authority to reject any materials or work not in conformance with project specifications.

**Local Agency or Public Agency:** All references to "Local Agency" or "Public Agency" shall be references to the Authority.

**Replace definition for "Department", "Director" and "State" in section 1-1.07B with:**

**Department:** The Contra Costa Transportation Authority except that any references to the Department's forms, websites, manuals, guides, test methods. These shall be defined as forms, websites, manuals, guides, test methods of Caltrans.

**Director:** The Authority's Executive Director.

**State:** The Contra Costa Transportation Authority (CCTA), including its authorized officers, employees, agents, consultants and volunteers.

**Replace "The Department" in the 1<sup>st</sup> paragraph in section 1-1.08 with:**

Caltrans



The Information Handout is available at the same location as the contract documents. General roadway cross sections are made available exclusively for the purpose of calculating earthwork volumes and are not considered part of the contract documents.

**Replace section 2-1.33A with:**

Complete forms in the *Proposal and Contract* book. Submit the forms with your bid as provided by the Authority.

Failure to submit the forms and information as specified may result in a nonresponsive bid.

**Delete section 2-1.33B**

**Replace 2-1.33C with:**

Submit your Proposal and Contract and any forms required for award:

1. Under sealed cover

**Replace the first paragraph of section 2-1.33D(1) with:**

The Proposal and Contract includes forms specific to this contract. The deadlines for the submittal of the forms vary depending on the requirements of each contract. Determine the requirements of the contract and submit the forms based on the applicable schedule specified in section 2-1.33D.

**Replace section 2-1.34 with:**

Submit one of the following forms of bidder's security equal to at least 10 percent of the bid:

1. Cash
2. Cashier's check payable to "Contra Costa Transportation Authority"
3. Certified check, payable to "Contra Costa Transportation Authority"
4. Signed bidder's bond by an admitted surety insurer in the form provided in the Proposal and Contract

**Replace the table in section 2-1.33D(2)(b) with:**

**Proposal and Contract Form Submittal Schedule for a Federal-Aid Contract with a DBE Goal**

Form	Submittal deadline
Bid to the Authority	Time of bid except for the public works contractor registration number
Copy of the Bid to the Authority as submitted at the time of bid with the public works contractor registration number	10 business days after bid opening
Subcontractor List	Time of bid except for the public works contractor registration number
Copy of the Subcontractor List as submitted at the time of bid with the public works contractor registration number	10 business days after bid opening
Small Business Status	Time of bid
Opt Out of Payment Adjustments for Price Index Fluctuations <sup>a</sup>	Time of bid
DBE Commitment	Time of bid
DBE Good Faith Efforts Documentation	No later than 4 p.m. on the 10th business day after bid opening
<sup>a</sup> Submit only if you choose the option.	

**Replace section 2-1.35 with:**

Submit your bid as directed in the *Notice to Bidders*. Bids not properly marked may be considered nonresponsive. Note several of the documents in the *Proposal and Contract* must be notarized before being submitted as part of the bid.



**Replace section 3-1.04 with:**

The Authority will either award the Contract or reject all bids within 60 days from bid opening.

After award, the Authority will issue a letter to the lowest responsible bidder enclosing the contract documents. You must sign and return the contract documents, contract bonds and insurance forms, within the period allowed under Section 3-1.18. Failure to execute the Contract and file acceptable required bonds and insurance will result in the forfeiture of your bid security. The Authority may then elect to award the Contract to the next lowest responsible bidder.

**Replace section 3-1.05 with:**

The successful bidder must furnish two bonds:

1. Payment bond to secure the claim payments of laborers, workers, mechanics, or material men providing goods, labor, or services under the Contract. This bond must be equal to at least 100 percent of the total bid.
2. Performance bond to guarantee the faithful performance of the Contract. This bond must be equal to at least 100 percent of the total bid.

Sureties on each bond will be an admitted surety insurer, as defined in Code of Civil Procedure section 995.120, authorized to do business in the State of California and satisfactory to the Authority. Payment and performance bonds must name the CCTA as obligee and Caltrans as an additional obligee.

The successful bidder must provide the Authority 30 days' notice before canceling or reducing any required bonds.

The successful bidder must replace any bond the Authority deems insufficient or finds the surety unsatisfactory within 10 days of receiving written notice from the Authority. No further payments will be due or made under the Contract until you have provided a bond placed with a surety deemed acceptable by the Authority.

The following are copies of the Performance Bond and the Payment Bond forms furnished by the Authority. The successful bidder must furnish the Payment Bond and Performance Bond on the forms supplied by the Authority.

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the CONTRA COSTA TRANSPORTATION AUTHORITY (hereinafter referred to as "Authority"), in cooperation with the CALIFORNIA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Caltrans"), has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Authority and Caltrans in the sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Authority and Caltrans, their officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by Authority, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Authority and Caltrans from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Authority's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Authority or Caltrans in enforcing such obligation.

Whenever Contractor shall be, and is declared by the Authority to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Authority's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Authority, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Authority under

the Contract and any modification thereto, less any amount previously paid by the Authority to the Contractor and any other set offs pursuant to the Contract Documents.

- (3) Permit the Authority to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Authority under the Contract and any modification thereto, less any amount previously paid by the Authority to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Authority may reject any contractor or subcontractor, which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Authority, when declaring the Contractor in default, notifies Surety of the Authority's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[Remainder of Page Left Intentionally Blank.]



IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR/PRINCIPAL

\_\_\_\_\_  
Name

By \_\_\_\_\_

SURETY:

By: \_\_\_\_\_  
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges,  
\$ \_\_\_\_\_.

(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

## ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,

(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS, the CONTRA COSTA TRANSPORTATION AUTHORITY (hereinafter designated as the "Authority"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_, in cooperation with the CALIFORNIA DEPARTMENT OF TRANSPORTATION (hereinafter designated as "Caltrans"), has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows:

\_\_\_\_\_  
(the "Work"); and

WHEREAS, Principal is required to furnish a bond in connection with the contract described above; providing that if Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Authority and Caltrans in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the sum being not less than one hundred percent (100%) of the total amount of the Contract, lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Authority or Caltrans in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Authority and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and

these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,  
if corporation)

\_\_\_\_\_  
Principal (Property Name of Contractor)

By \_\_\_\_\_  
(Signature of Contractor)

(Seal of Surety)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney in Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

## ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,

(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**Replace section 3-1.08 with:**

You are required to report on Small Business Enterprise usage on a quarterly basis during the term of each contract, using a form provided by the Authority.

**Replace "Reserved" Section 3-1.09 with:**

**3-1.09 BID PROTESTS**

For purpose of this bid protest procedure, the following definitions apply:

1. "Bid Protest" means a protest filed by a bidder on this contract which
  - 1.1 claims that any other bidder(s) on the contract be disqualified or rejected for any reason;
  - 1.2 contests an Authority staff recommendation to award the contract to a particular bidder; or
  - 1.3 contests an Authority staff recommendation to disqualify or reject any other bidder(s) on the contract.
2. "Protested Bidder" means a bidder on a contract which the bid protest claims should be disqualified or rejected.
3. "Protesting Bidder" means a bidder on a contract, or such bidder's authorized representative, who files a bid protest on the contract.
4. "Written Notice" means notice to be given in writing addressed to the Authority, the protesting bidder or protested bidder (as appropriate). Delivered by registered or certified mail (return receipt requested), by personal delivery or by any other method that provides reliable evidence of the date and time of receipt. Written notice provided by personal delivery will be deemed received on the date and time of delivery, except as expressly authorized, facsimile or electronic mail will not be used to provide written notice. If permitted, facsimile or electronic mail notice will be considered received on the date and time that transmission is confirmed by the transmitting equipment.

Only a bidder on a contract or such bidder's authorized representative may file a bid protest.

Bid protests must be received after bid opening and before 4:00 PM on the fifth (5th) working day after bid opening. Bid protests received after the deadline or that violate these requirements will not be considered.

Bid protests must be in writing and must:

1. Include the name, address, telephone, and facsimile telephone numbers of the Protesting Bidder
2. Identify the contract which the bid protest pertains to, including the contract number and the date of bid opening
3. identify and explain the factual and legal basis for the protest,
4. by attachment to the bid protest, include any written materials that the bid protester wishes to have considered in connection with the protest.

Submit bid protests to:

Deputy Executive Director, Projects  
Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, CA 94597

If the bid protest is properly filed, a copy will be provided to the Protested Bidder and the protest will be reviewed by the Authority staff. The Protested Bidder will have the opportunity to respond to the protest. Any response by the Protested Bidder may be used by Authority staff during its review of the protest. On request, the Protesting Bidder will provide promptly any additional information necessary for staff to conduct its review of the bid protest. Staff may, but will not be obligated, to hold a meeting or meetings to obtain additional information and to seek to resolve the matter. If a meeting is held, staff will give notice to the Protesting Bidder and the Protested Bidder, indicating the time and place of the meeting. Bid protests will be withdrawn and no longer considered by the Authority if Protesting Bidder fails to attend any meeting.

At the conclusion of its review, the staff will provide the Protesting Bidder and the Protested Bidder written notice of their recommendation with a brief explanation with respect to the bid protest. Upon receiving the staff recommendation, the Authority Board will issue a decision regarding the bid protest. The decision of the Authority Board is final with respect to the disposition of the bid protest and non-appealable.

Any bidder that fails to strictly comply with the bid protest procedures set forth herein shall be deemed to have failed to exhaust its administrative remedies and shall be precluded from filing any claim covered by the bid protest procedure.

**Delete section 3-1.11**

**Replace section 3-1.18 with:**

The Contract Form is included in the *Proposal and Contract*.

Submittal by the Authority of the contract signature document to the successful bidder for execution signifies notice of award. The successful bidder must sign the Contract Form and all copies and return it to the Authority within 10 business days with:

- A. The originals and one copy of each of the contract bonds.
- B. One of the following:
  - 1. Two copies of a certificate of consent to self-insure issued by the Director of Industrial Relations of the State of California, or
  - 2. Two copies of a certificate of worker's compensation insurance issued by an admitted insurer, or
  - 3. Two copies of a certificate of worker's compensation insurance, certified by the Director of Industrial Relations of the State of California or the insurer.
- C. Two copies of certificates of insurance for the Bidder's insurance policies and endorsements thereto.
- D. If requested by the Authority, complete copies of an insurance policy that provides coverage required under this contract. If requested by you, the Authority will return the policy after having reviewed it.

Within 10 business days after the Authority receives the last of the above-listed documents, the Authority will review the contract documents and, if in order, will notify you of Contract approval.

The bidder's security may be forfeited for failure to execute the contract within the time specified (Pub Cont Code §§ 10181, 10182, and 10183).

\*\*\*\*\*

**4 SCOPE OF WORK**

**Add to section 4-1.06C:**

Within 15 days from notification of the Engineer's determination, you must file an Initial Potential Claim Record under Section 5-1.43, otherwise the decision of the Engineer is considered correct and final and accepted by you.

The Initial Potential Claim Record must include:

- 1. your position as it differs from the Engineer's determination
- 2. any additional information obtained by you, including additional geotechnical data
- 3. your certification that the following were made in preparation of the bid:
  - a. a review of the contract, the reports included in the Informational Handout, the log of test borings and other records of geotechnical data that were made available to you before bid opening
  - b. an examination of the conditions above ground at the job site

Submit supplementary information, obtained after the filing of the Initial Potential Claim Record, promptly.

\*\*\*\*\*

**5 CONTROL OF WORK**

**Add to the list in section 5-1.02:**

- 6. The Signature Document (Contract Form)
- 7. The Contract Bonds

- 8. Notice to Bidders
- 9. The Proposal

**Replace section 5-1.13E with:**

Apply for all jurisdictional permits required to perform the work and include the cost of the required permits in the bid price. Permits include the following:

Caltrans Permit – Obtain a copy of the Caltrans encroachment permit issued to CONTRA COSTA TRANSPORTATION AUTHORITY and comply with all provisions of said permit.

Apply for Caltrans' construction encroachment permit within two (2) working days after the Notice of Award.

Contra Costa County - Apply for a Contra Costa County construction encroachment permit in your name within two (2) working days after the Notice of Award. You are responsible for preparing all necessary documents and all fees associated with getting the permit.

City of San Pablo - Apply for a City of San Pablo construction encroachment permit in your name within two (2) working days after the Notice of Award. You are responsible for preparing all necessary documents and all fees associated with getting the permit.

City of Richmond - Apply for a City of Richmond construction encroachment permit in your name within two (2) working days after the Notice of Award. You are responsible for preparing all necessary documents and all fees associated with getting the permit.

**Add to section 5-1.20A:**

During the progress of the work under this Contract, work under the following contracts may be in progress at or near the job site of this Contract:

**Coincident or Adjacent Contracts**

Contract no.	County–Route–Post Mile	Location	Type of work
04-3A7714	04-Ala,CC-80-Ala 2.3/8.0 CC 0,0/13.1	Alameda and Contra Costa Counties At Various Locations From 0.1 Mile West Of Powell Street Undercrossing To 0.5 Mile East Cummings Skyway Overcrossing	Integrated Corridor Mobility
04-3G6104	CC_80_PM 00/10.70	El Cerrito, Richmond, San Pablo, Pinole, Hercules,	Roadway Rehabilitation

The Contractor must coordinate with other contractors and/or operations managers on adjacent projects, to minimize potential conflicts and coordinate traffic control. The Contractor must also coordinate with and accommodate other segment contractors when preparing operations and work schedules.

**Add to Section 5-1.20B(1):**

Make all Permits available to operating personnel during construction activities. You are responsible for all fines, damages and job delays incurred due to failure to implement the requirements of the Permits.

**Replace “Reserved” section 5-1.20D with:**

**5-1.20D Relations with Caltrans**

An encroachment permit has been issued to the Authority by Caltrans for work within Caltrans right of way. You must be fully informed of and comply with the requirements of this encroachment permit as well as rules, regulations, and conditions that may govern your activities within the Caltrans right-of-way and should conduct the work accordingly.



You must obtain an encroachment permit rider from Caltrans before working within the State right of way.

A fee may apply.

**Replace “Reserved” section 5-1.20E with:**

**5-1.20E Relations with Local Agencies**

You must obtain a construction encroachment permit from the City of San Pablo, City of Richmond, and Contra Costa County before working within these local agencies right of way.

Obtain permit application information from:

City of San Pablo:

City of Richmond:

Contra Costa County:

A fee may apply.

**Replace “Reserved” section 5-1.20F with:**

**5-1.20F Relations with Utility Companies**

There are existing underground high pressure petroleum pipelines under the El Portal Drive owned and operated by Phillips 66 Pipe Line Company within the public right of way and portion on two full take parcel acquired on Rollingwood Drive.

No direct load, which includes but is not limited to traffic loads and/or construction loads, may be placed within five horizontal feet of the pipeline where the pipe line cover is less than ten feet.

A representative of the Phillips 66 Pipe Line Company will observe the activities near their pipeline to insure protection. It is your responsibility to coordinate with Phillips 66 Pipe Line Company (Telephone: (209)-836-1873 ) at least 7 days before starting work in this area. You shall be responsible for maintaining sufficient lead time for submission of any submittal required by Phillips 66 Pipe Line Company as a condition of approval.

**Add new section 5-1.20G:**

**5-1.20G Local Agency Coordination**

Within one week after the Pre-construction Conference, provide copies of the project schedule to the following emergency services and local agencies:

San Pablo Police Department-----	(510) 215-3109
City of San Pablo-----	(510) 215-3065
Richmond Police Department-----	(510) 233-1214
City of Richmond-----	(510) 307-8112
Contra Costa County Public Works Department-----	(925) 313-2327
CCC Fire District-----	(925) 941-3330
Local Ambulance Service-----	(510) 970-5000
Pacific Gas & Electric (Linda Swartz)-----	(925) 674-6776
Pacific Gas & Electric (Bernardo Cortes, Jr)-----	(925) 459-7306
Pacific Gas & Electric (Mike Giovannetti)-----	(510) 231-3819
AT&T (Terry Daughton)-----	(925) 823-0864
Comcast Cable (Kurt Murphy)-----	(510) 377-5420
Comcast Cable (Fred Boyd)-----	(925) 383-6504
West County Wastewater District (Ken Deibert)-----	(510) 222-6700
California Highway Patrol-----	(510) 450-3821
EBMUD (George Chiu)-----	(510) 287-1020

Immediately notify each agency of any changes to the schedule or any unplanned construction activity or project situation that might reasonably be expected to affect the agencies' or services' ability to perform their missions.

**Replace “RESERVED” section 5-1.21 with:**

**5-1.21 Right of Way Obstructions**

Do not enter the following parcels to do any work except for during the dates shown below:

Parcel No.	Owner	Type	Work around clearance date
63740 - 1	WCCUSD	Permanent Easement	Riverside Elementary School Summer Break, Winter Break, President Weeks Recess and Spring Break, Weekends and when school is not in session
63740 – 2	WCCUSD	TCE	Riverside Elementary School Summer Break, Winter Break, President Weeks Recess and Spring Break, Weekends and when school is not in session

In the event that the parcels secured for the project mentioned above are not available by the date specified and, if in the opinion of the Engineer, it is considered an excusable delay, an extension of time determined pursuant to the provisions in Section 8-1.07B, "Time Adjustments," will be granted.

You will have the use of the Temporary Construction Easement (TCE) for the duration specified in the above table.

To request extension of your use of a TCE, submit an RFI at least 20 working days before the date that your use of that TCE expires. You will be charged for costs incurred by the State for extending your use of the TCE.

**Replace section 5-1.23A with:**

Section 5-1.23 includes specifications for action and informational submittals

Any submittal not specified as an informational submittal is an action submittal.

When the contract requires submittals to the Office of Structure Design (OSD) Documents Unit, submit them to the Engineer instead.

Each sheet of a submittal must include:

1. Contract number
2. District–County–Route–Post Mile
3. Structure name and number, if any
4. A transmittal form –
  - a) A separate form for each specific item, class of material, equipment.
  - b) A single form if the items taken together constitute a manufacturer's package or are so functionally related that expediency indicates checking or review of the group or package as a whole
  - c) A unique number, sequentially assigned, will be noted on the transmittal form accompanying each item submitted. Submittal numbers shall will have the following format: “XX.YY (SP NN-N.NN)”; where “XX” is the sequential number assigned by you, “YY” is the sequential number of the submittal (“01” for the first submittal, “02” for the second submittal, etc.), and “(SP or SS NN-N.NN)” identifies the Special Provision (SP) or

Standard Specification (SS) section number that requires the submittal. For example, if the twelfth submittal you make is for falsework, under Section 48-2, the initial submittal would be "12.01 (SS 48-2)". If a re-submittal were required, it would be "12.02 (SS 48-2)."

- d) Indicate on the form if material, equipment, or method of work deviates from the plans and specifications

The Department rejects a submittal if it has any error or any omission.

Convert foreign language documents to English and U.S. customary units.

Submittal reviews will be only for general conformance with the design concept and general compliance with the Plans and Specifications. It will not include review of quantities, dimensions, coordination with the work, or construction safety precautions, all of which are your sole responsibility.

Review of drawings, methods of work, or information regarding materials or equipment you propose to provide, will not relieve you of your responsibility for errors and will not be regarded as an assumption of risks or liability by the Authority, or by any officer or employee or by any engineering firm conducting such review on behalf of the Authority, and you will have no claim under the Contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed.

Review of a specific item will not indicate acceptance of an assembly of which the item is a component. The Engineer will not be required to review and will not be responsible for any deviations from the Plans and Specifications not clearly noted by you, nor will the Engineer be required to review partial submissions or those for which submissions for correlated items have not been received.

The Engineer will have sole authority for determining the conformance to the specification of each item.

You are responsible for:

1. Providing submittals in a timely way to not claim extension of contract time or additional compensation
2. Accuracy and completeness of submittal information
3. Material, equipment, or method of work will be used as described in the submittal
4. Ensuring that there are no conflicts with other submittals
5. Ensuring coordination of submittals

Your failure to provide submittals in a timely manner will not be cause for extension of contract time or claims for additional compensation.

**Add after the 6<sup>th</sup> paragraph in section 5-1.23B(1):**

If the Contract requires a (re)submittal, you will submit eight copies to the Authority.

Unless otherwise specified, within 30 working days after receipt of the (re)submittal, the Engineer will review the (re)submittal and return three copies to you. The returned (re)submittal will indicate one of these actions:

1. If the review indicates that the material, equipment, or work method is in general conformance with the design concept and complies with the Contract requirements, (re)submittal copies will be marked "NO EXCEPTION TAKEN." In this event, you may start the work method or incorporate the material or equipment covered by the (re)submittal.
2. If the review indicates limited corrections are required, copies will be marked, "MAKE CORRECTIONS NOTED." You may start the work method or incorporating the material and equipment covered by the (re)submittal with the noted corrections. Where (re)submittal information will be incorporated in Operation and Maintenance Data, a corrected copy will be provided.
3. If the review reveals that the (re)submittal is insufficient or contains incorrect data, copies will be marked "REVISE AND RESUBMIT." Except at its own risk, you should not undertake work covered by this (re)submittal until it has been revised, resubmitted, and returned marked either, "NO EXCEPTION TAKEN" or "MAKE CORRECTIONS NOTED."

4. If the review indicates the material, equipment, or work method cannot conform to the design concept and does not comply with the Contract requirements, (re)submittal copies will be marked "REJECTED." You should not undertake work covered by this (re)submittal until a new submittal for this work has been submitted and returned marked "NO EXCEPTION TAKEN" or "MAKE CORRECTIONS NOTED."

A mark of "NO EXCEPTION TAKEN" or "MAKE CORRECTIONS NOTED" means that the Authority has no objection to you, at your own risk, using the plan or method of work proposed, or providing the materials or equipment proposed.

The Engineer will be provided the review times designated in these Contract Documents. The reviews of re-submittals are to be allotted the same review time specified for the initial submittal. Where a review time is not specified, the Engineer will be provided 30 business days for review and any subsequent re-review.

**Replace the 2<sup>nd</sup> paragraph in section 5-1.27E with:**

Submit change order bills to the Engineer.

**Delete the 3<sup>rd</sup> thru 5<sup>th</sup> paragraph in section 5-1.27E:**

**Replace section 5-1.31 with:**

Keep the job site neat. In areas visible to the public:

- A. Dispose of broken concrete and debris concurrently with its removal. If stockpiling is necessary, dispose of weekly.
- B. Furnish trash bins for debris from construction. Place debris in trash bins daily. Stack forms or falsework that are to be re-used neatly and concurrently with their removal. Dispose of forms and falsework that are not to be re-used concurrently with their removal.
- C. All trash, debris, and recycle bins, cans or containers of any kind will have a closeable top and be closed tightly at the end of each shift on each day. No debris will be visible through covering.

Failure to meet the requirements of A, B, or C will result in a \$500 deduction for each occurrence. This deduction is in addition to all other retentions or deductions identified under these Special Provisions.

**Add to the end of the 2<sup>nd</sup> paragraph in section 5-1.32:**

You will secure, at your own expense, areas required for plant sites, storage of equipment or materials, or for other purposes.

**Add to section 5-1.36D:**

The utility owner will relocate a utility shown in the following table before the corresponding date shown:

**Utility Relocation and Date of the Relocation**

Utility	Location	Date
PG&E OH Electrical Relocation	Riverside Avenue, Sta "R" 10+20 and 10+65	12/31/2015
Comcast Relocation (PG&E and Comcast Joint Pole Relocation)	Riverside Avenue, Sta "R" 10+20 to 10+96	12/31/2015
AT&T UG Relocation	Riverside Avenue Sta "R" 10+13 to 10+96	12/31/2015

Installation of the utilities shown in the following table requires coordination with your activities. Make the necessary arrangements with the utility company through the Engineer and submit a schedule:

1. Verified by a representative of the utility company
2. Allowing at least the time shown for the utility owner to complete its work

**Utility Relocation and Contractor-Arranged Time for the Relocation**

Utility	Utility address	Location	Days
PG&E OH Pole Relocation	PG&E 1030 Detroit Avenue Concord, CA 94518 Phone: (925) 674 6776	El Portal Dr, Sta "180" 291+19	60
PG&E Underground Electrical and Line Relocation	PG&E 1030 Detroit Avenue Concord, CA 94518 Phone: (925) 674 6776	El Portal Dr, Sta "180" 282+52 to 283+81 and from "180" 290+98 to 291+14	60

Notify the Engineer and PG&E in writing, 60 working days before the relocation of the underground electrical and overhead electric pole on El portal Drive.

Notify the Engineer 60 days in advance to coordinate with PG&E, Comcast and AT&T for any work requiring a temporary or permanent modification to their facilities.

**Add to the end of the 1<sup>st</sup> paragraph in section 5-1.39A:**

Your expense in the event such injuries, losses or damages are caused by acts of the federal government or the public enemy will be limited to the Contract Price

**Add after the 1st paragraph in section 5-1.42:**

The Prime Contractor will submit all RFI's.

**Replace section 5-1.43A with:**

Minimize and mitigate impacts of potentially claimed work or event{ XE "Potential claims" }.

For each potential claim, assign an identification number determined by chronological sequencing and the 1st date of the potential claim.

Use the identification number for each potential claim on the:

1. *Initial Potential Claim Record*
2. *Supplemental Potential Claim Record*
3. *Full and Final Potential Claim Record*

Failure to comply with this procedure is:

1. Waiver of the potential claim and a waiver of the right to a corresponding claim for the disputed work in the administrative claim procedure

**Replace section 5-1.43C with:**

Within 15 days of submitting the *Initial Potential Claim Record*{ XE "Potential claims:Supplemental Potential Claim Record" }, submit a *Supplemental Potential Claim Record* including:

1. Complete nature and circumstances causing the potential claim or event
2. Contract specifications supporting the basis of a claim
3. Estimated claim cost and an itemized breakdown of individual costs stating how the estimate was determined
4. TIA{ XE "Time impact analysis" }

The Engineer evaluates the *Supplemental Potential Claim Record* and furnishes you a response within 20 days of receiving the submittal. To pursue a potential claim, comply with sections 5-1.43D.

If the estimated cost or effect on the scheduled completion date changes, update the *Supplemental Potential Claim Record* information as soon as the change is recognized and submit this information.

**Delete section 5-1.43E**

**Replace section 5-1.46 with:**

When you complete the work, request the Engineer's final inspection

If the Engineer determines that the work is complete, the Engineer recommends Contract acceptance by the Authority 30 days after contract acceptance by the Authority, you are relieved from:

1. Maintenance and protection duties
2. Responsibility for injury to persons or property or damage to the work not as a result of your negligence occurring after Contract acceptance except as specified in section 6-3.06

Submit all outstanding project documents (including materials certifications, labor compliance documentation and all other required project closeout forms and documentation) within 30 days of the issuance of the Proposed Final Payment. If the 30<sup>th</sup> day does not fall on a business day, submit before the close of business on the next business day.

Should you fail to submit the documents as required, you will pay liquidated damages of \$1,000.00 to the Authority for each business day until the documentation is received. These liquidated damages are in addition to liquidated damages specified under section 8-1.10.

In the event you provide a written statement of claims this section will apply to all unrelated project documentation required to close out the project.

AA

**6 CONTROL OF MATERIALS**

**Add to section 6-2.03:**

The Department furnishes you with:

- Model 2070 controller unit , and detector sensor units
- Model 2070 controller assembly, including controller unit, completely wired 332L controller cabinet, and detector sensor units

**Replace the last sentence in the 1<sup>st</sup> paragraph in section 6-3.02 with:**

Under Pub Cont Code § 3400, you may submit requests for substitution of "or equal" items before contract award.

**Replace No.1 in the list in paragraph 2 in section 6-3.02 with:**

1. is at least 60 days before use of the item or at the preconstruction meeting, whichever is later



**Replace section 7-1.02K(6)(j)(iii) with:**

**7-1.02K(6)(j)(iii) Earth Material Containing Lead**

Section 7-1.02K(6)(j)(iii) includes specifications for handling, removing, and disposing of earth material containing lead.

Submit a lead compliance plan.

Lead is present in earth material on the job site. The average lead concentrations are below 1,000 mg/kg total lead and below 5 mg/L soluble lead. The material on the job site:

1. Is not a hazardous waste
2. Does not require disposal at a permitted landfill or solid waste disposal facility

Lead is typically found within the top 2 feet of material in unpaved areas of the highway. Reuse all of the excavated material on the right-of-way.-Handle the material under all applicable laws, rules, and regulations, including those of the following agencies:

1. Cal/OSHA
2. CA RWQCB, Region 2\_San Francisco
3. CA Department of Toxic Substances Control

**Replace section 7-1.05 with:**

**7-1.05 INDEMNIFICATION**

**7-1.05A General**

Each Authority Indemnitee (additional insured), as defined in Section 7-1.05B, "ADDITIONAL INSUREDS," of these Special Provisions will not be answerable or accountable in any way for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by you , or your workers, or anyone employed by you.

You will be responsible for any liability imposed by law and for injuries to or death of any person including workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

At your sole expense and to the fullest extent allowed by law, you will defend (with counsel of Authority's choosing), indemnify, save, and hold harmless each Authority Indemnitee, from all claims, suits, demands, causes of action, costs, expenses, liabilities, losses, damages, injuries or actions of every name, kind and description, in law or in equity, including injuries or death of any person including workers and the public or damage to property, regardless of whether the allegations are false, fraudulent, or groundless, to the extent arising out of or incident to any acts, omissions or willful misconduct of you, your officials, officers, employees, agents, consultants and subcontractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment and the payment of all consequential damages and attorneys' fees and other related costs and expenses except as otherwise provided by statute. You will defend, at your sole cost, expense and risk, with counsel of the Authority's choosing, all such suits, actions or other legal proceedings of every kind that may be brought or instituted against the Authority Indemnitees. You will pay and satisfy any judgment, award or decree that may be rendered against the Authority Indemnitees in any such suit, action or other legal proceeding. You will reimburse the Authority Indemnitees for any and all legal expenses and costs incurred by each of them in connection with therewith or in enforcing the indemnity herein provided.

You will require every subcontractor performing Work to similarly provide the indemnification required by this Section in favor of the Authority Indemnitees. You agree to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the Work. You will be as fully responsible to the Authority for the acts and omissions of your subcontractors and of persons either directly or indirectly employed by your subcontractors, as you are for the acts and omissions of persons directly employed by you.



With respect to third party claims against you, you waive all rights to any type of express or implied indemnity against each Authority Indemnitee.

It is the intent of the parties that you will defend, indemnify, save, and hold harmless each Authority Indemnitee, as defined in Section 7-1.05B "ADDITIONAL INSUREDS," of these Special Provisions, from any claims, suits, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries or actions as set forth above regardless of the existence or degree of fault or negligence on the part of each Authority Indemnitee, the Contractor or any subcontractor or employee thereof, other than the sole active negligence or willful misconduct of an Authority Indemnitee, except as precluded by Civil Code 2782.

Your expense in the event such injuries, losses or damages are directly and proximately caused by acts of the federal government or the public enemy will be limited to the Contract Price. Your expense in the event such injuries, losses or damages are proximately caused by an Act of God within the meaning of Public Contract Code Section 7105 will be limited to five percent (5%) of the Contract Price, provided that the work damaged was built in accordance with accepted and applicable building standards and the Plans and Specifications.

#### **7-1.05B Additional Insureds**

The following entities and their successors and assigns, governing bodies or boards, board members, directors, officers, agents, employees, consultants, and subconsultants will be named as additional insureds on all insurance coverage required under this contract and **will be defended, indemnified, saved and held harmless to the same extent as the Authority.** The insurance coverage will contain no special limitations on the scope of protection afforded to these additional insureds.

The State of California  
111 Grand Avenue  
P.O. Box 23660  
Oakland, CA 94623-0440

Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, CA 94597

Metropolitan Transportation Commission  
101 Eighth Street  
Oakland, CA 94607

URS Corporation  
One Concord Center  
2300 Clayton Road, Suite # 1400  
Concord, CA 94520

Fehr & Peers  
100 Pringle Avenue, Suite 600  
Walnut Creek, CA 94596

WRECO  
1243 Alpine Road, Suite 108  
Walnut Creek, CA 94596

Haygood & Associates  
1496-B Solano Avenue  
Albany, CA 94706

City of San Pablo  
13831 San Pablo Avenue, Building #3  
San Pablo, CA 94806

City of Richmond  
450 Civic Center Plaza,

Richmond, CA 94804

Contra Costa County Public Works Department  
255 Glacier Drive  
Martinez, CA 94553

West Contra Costa Unified School District  
1400 Marina Way South  
Richmond, CA 94804

**Replace the 4th paragraph in section 7-1.06D(2) with:**

Each Authority Indemnitee (additional insured) listed in Section 7-1.05B, including its officers, directors, agents (except agents who are design professionals), and employees, must be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or activities performed by or on behalf of you under this Contract. Coverage for such additional insureds does not extend to liability:

1. Arising from any defective or substandard condition of the roadway which existed at or before the time you started work, unless such condition has been changed by the work or the scope of the work requires you to maintain existing roadway facilities and the claim arises from your failure to maintain;
2. For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of you that occurred during the course of the work; or
3. To the extent prohibited by Ins Code § 11580.04.

**Replace section 7-1.09 with:**

**Section 7-109: TITLE VI ASSURANCES**

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

- (1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

### IV. Davis-Bacon and Related Act Provisions

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

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

#### 1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

## **2. Withholding**

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

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

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

## **4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

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

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



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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

**10. Certification of eligibility.**

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

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

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

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

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

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

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

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

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

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

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

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

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

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

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**7-1.12 West Contra Costa Unified School District**

**7-1.12A FINGERPRINTING AND BACKGROUND CHECK REQUIREMENTS**

The District requires submission of fingerprints to the Department of Justice and the completion of criminal background checks for the Contractor, the Contractor's employees or any subcontractor employees or workers who are expected to come into contact with District students. The District has an electronic fingerprinting service called LiveScan, which shall be made available to the Contractor and its subcontractors and their respective employees and workers. Electronic services are preferred by the legislative intent of the Education Code: "Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice (DOJ) may mandate electronic submission of the fingerprint cards and other information required by this section." (Cal. Ed. Code, § 45125.1(j).)

The District has determined under Education Code section 45125.1(d) that in performing services pursuant to this Agreement, Contractor or Contractor's employees or subcontractor's employees will have substantial contact with pupils under the totality of the circumstances. Therefore, as required under Education Code section 45125.1(a), Contractor's employees and subcontractor's employees who will provide work under the Contract must submit their fingerprints in a manner authorized by the DOJ together with a fee determined by the DOJ in order to conduct a criminal background check to determine whether these individuals have been convicted of or have charges pending for a felony as defined under Education Code section 45122.1.

The Contractor, its subcontractor and their respective employees who perform work on the Project, may not come in contact with District pupils until the DOJ has determined that such persons have not been convicted of a felony and have no criminal charges pending for a felony as defined in Education Code section 45122.1. Contractor shall certify in writing to the District and the Authority that Contractor and its subcontractors and all of their respective employees who may come in contact with pupils have not been convicted of and have no criminal charges pending for a felony, as defined in Education Code section 45122.1. Certifications shall be in the forms required by the District and provided in Appendix C of the Special Provisions.

In the event Contractor or its subcontractors fails to comply with all of the requirements of Education Code section 45125.1 and injury results from such failure, Contractor shall defend, indemnify, protect and hold the District and the Authority and their respective agents, officers and employees harmless from any and all claims, demands, liability, judgments, awards, losses, injury, damages, expenses, charges or costs of any kind or character whether to the District, the Authority or to any person or property which arise from or are connected with or are caused or claimed to be caused by Contractor's failure to comply with the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Contractor from performing or from using employees or subcontractor employees who may have contact with pupils who have been convicted of or have charges pending for a felony as defined in Education Code section 45122.1.

Any subcontractor hired by Contractor shall be subject to and shall comply with this provision. Contractor and its subcontractors shall be jointly and severally liable for any injury that results from a subcontractor's failure to comply with this provision.

**7-1.12B TUBERCULOSIS CLEARANCE CERTIFICATION**

A portion of the work on this Project will occur on an active school site operated by the West Contra Costa Unified School District ("District"). The Contractor, the Contractor's employees or any subcontractor employees or workers who are expected to come into contact with District students shall be free of active tuberculosis in accordance with California Education Code Section 49406 and District policy. All such persons shall undergo the District approved intradermal TB test. The Contractor shall provide the District and the Authority with written certification demonstrating compliance with this requirement prior to commencing work on District property. Certifications shall be in the forms required by the District and provided in Appendix C of the Special Provisions.

## 8 PROSECUTION AND PROGRESS

Add to section 8-1.02D(6):

The baseline schedule must show Riverside Pedestrian Overcrossing (POC) Abutment 7, Bent 6 and other construction work as shown on the plans within Riverside Elementary School, including actual activity start and finish dates. Temporary Construction Easement (TCE) area is only allowed during the school break periods as shown in the following table:

School Not In Session Summary Table

School Breaks	Break in Calendar Days	Approximate Period	Remarks
Summer Break	74	June 9 – August 21	Including Sat and Sun
Winter Break	16	December – January	Including Sat and Sun
President Weeks Recess	9	Third week of February	Including Sat and Sun
Spring Break	9	First week of April	Including Sat and Sun
Total Calendar Days	108		

Obtain necessary permit from the City of San Pablo in advance to work on POC Abutment 7 and Bent 6 work within Riverside Elementary School on extended work hours, weekends and holidays.

Coordinate and notify Riverside Elementary School, West Contra Costa County Unified District / Management 60 calendar days in advance of beginning work inside the school property. Dates shown above are based on Year 2015 school calendar, actual dates may be different for Year 2016.

Coordinate and notify Division of the State Architect, Oakland Regional Office, State of California - Department of General Services, located at 1515 Clay Street, Suite 1201, Oakland, CA 94612, Phone 510.286.0375, 15 calendar days in advance of beginning work in the school property. DSA requires the contractor submit the following DSA 6C, DSA 102-IC, DSA 103, DSA 140 and DSA 156 forms as-needed for POC construction work within Riverside Elementary School Property. The forms can be downloaded from DSA web page.

<http://www.dgs.ca.gov/dsa/Forms.aspx>

**Add to section 8-1.02D (7):**

**8-1.02D(7) Weekly Schedule Progress Meeting (Critical Path Method)**

Hold a weekly schedule progress meeting with the Engineer to:

1. Discuss near term schedule activities
2. Address any long term schedule activities
3. Address the weekly controlling operation
4. Discuss any relevant technical issues

Develop a 4-week schedule identifying the previous week's work and a 3-week look-ahead. Provide sufficient detail:

1. By including your and your subcontractors' actual and planned activities for offsite and construction work
2. To address all future activities
3. To identify issues requiring Engineer's action or input
4. To identify all construction activities that may affect the public through:
  - 4.1. Traffic
  - 4.2. Noise
  - 4.3. Vibration
  - 4.4. Work that requires:





1. Progress payments
2. After-acceptance payment except for claims

**Delete section 9-1.11.**

**Add to the first paragraph of section 9-1.16A:**

9. Retention

**Add to section 9-1.16C:**

The following items are eligible for progress payment even if they are not incorporated into the work:

1. Control and neutral conductors
2. Irrigation controllers
3. Irrigation controller enclosure cabinets
4. Pipe (irrigation System)
5. Backflow preventers
6. Backflow preventer assembly enclosures
7. Valves
8. Sprinklers
9. Pavement markers
10. Piling
11. Prestressing Steel for cast-in-place members (Sealed Packages Only)
12. Masonry Block
13. Type B joint seal
14. Bar reinforcing steel
15. Miscellaneous Metal
16. Handrailing
17. Fences and gates
18. Railings
19. Pipe culverts
20. Rock slope protection fabric
21. Crash cushions
22. Miscellaneous iron and steel
23. Sewer pipes and appurtenances
24. Lighting fixtures
25. Luminaires
26. Sign structures
27. Signal and lighting standards
28. Signal heads and mounting brackets
29. Contractor-furnished sign panels

**Replace section 9-1.16E(4) with:**

The Authority may demand that you remove any claims filed under Civ. Code § 9350 et seq

Alternatively, the Authority may, in addition to other amounts properly retained under this Contract, deduct from progress payments an amount equal to 125% of the value claimed under a stop payment notice filed with the Authority for labor, materials, supplies, equipment or other things of value furnished to or incorporated into the project for which payment was not received. The Authority may release such funds on receipt of satisfactory evidence that you have resolved such claim by settlement, stop payment notice release bond or otherwise.

**Add to the first paragraph of section 9-1.17C:**

6. Retention

**Replace section 9-1.16F with:**

The Authority will withhold 5 percent of all progress payments as retention. The Authority shall hold retainage from you and shall make prompt and regular incremental acceptances of portions, as determined by the Authority, of the contract work, and pay retainage to you based on these acceptances. You, or your subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Authority. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the Authority's prior written approval. Any violation of this provision shall subject you or your subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to you or your subcontractor in the event of a dispute involving late payment or nonpayment by you, deficient subcontract performance, or noncompliance by a subcontractor. Any unpaid retention shall be paid to you on the Final Payment.

You will have the right to substitute securities for the retention under Pub Cont Code § 22300. No substitution will be accepted until:

1. the Authority approves the securities and their value,
2. the parties have entered into an escrow agreement (if the securities are to be held in escrow) in a form substantially similar to that under § 22300,
3. all documentation necessary for assignment of the securities to the Authority or to the escrow agent, are delivered in a form satisfactory to the Authority.

If you have substituted securities for any of the retention, the Authority may request that such securities be re-valued from time to time, but not more often than monthly. Such re-valuation will be made by a person or entity designated by the Authority and approved by you. If such re-valuation results in a determination that the securities have a market value less than the amount of retention for which they were substituted, then the amount of the retention required under the Contract will be increased by such difference in market value. Such increased retention will be withheld from the next progress payment(s) due to you under the Contract.

**Add to section 9-1.17D(1):**

Complete and submit the *Release and Certificate of Final Payment* Form before close of business of the 30th day after receiving the proposed final payment.

**Add to section 9.17D(2):**

File all claims with the Chief Financial Officer (CFO) of the Contra Costa Transportation Authority. Submit all claims in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract.

**I-80/San Pablo Dam Road Interchange**

**CCTA Contract No. 416, Caltrans Contract No. 04-0A0814**

**RELEASE AND CERTIFICATE OF FINAL PAYMENT**

With reference to Agreement **CCTA Contract No. 416, Caltrans Contract No. 04-0A0814**, and all Change Orders between \_\_\_\_\_ (hereafter referred to as CONTRACTOR) and CONTRA COSTA TRANSPORTATION AUTHORITY (hereafter referred to as AUTHORITY), for constructing the above named project, CONTRACTOR hereby certifies and represents that it has made full payment to all persons and entities of all costs, charges and expenses incurred by it or on its behalf for labor, services, equipment and materials supplied to CONTRACTOR by such persons and entities in connection with its performance of the work under said Contract.

CONTRACTOR further certifies that to its best knowledge and belief, each of its subcontractors and suppliers has made full payment of all costs, charges and expenses incurred by it or on its behalf of work labor, services, materials and equipment supplied and/or used by it in connection with CONTRACTOR's work under said Contract.

In consideration of the receipt, which receipt is hereby acknowledged, of an aggregate amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

for all work performed pursuant to the Contract, including the adjusting payment, CONTRACTOR hereby unconditionally and fully releases and forever discharges AUTHORITY and its officers, employees, agents, consultants, volunteers, premises and property from all claims, liens and obligations of every nature, presently known or unknown, arising out of or in connection with the performance of said Contract and all Change Orders thereto except:

CONTRACTOR expressly waives all rights or benefits, which it now has, or in the future may have, under the terms of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known to it must have materially affected its settlement with the debtor.

As additional consideration for all payments mentioned above, including the final adjusting payment, if any, CONTRACTOR agrees to indemnify and hold harmless AUTHORITY, the Department of Transportation of the State of California, and their respective successors, assigns and consultants, and their respective officers, directors, agents, employees and subconsultants, including the Director and the Engineer, from and against all costs, losses, damages, claims, causes of action, judgments and expense, including attorneys' fees, arising out of or in connection with claims against AUTHORITY which arise out of the performance of the work under the Contract and which may be asserted by CONTRACTOR or any of its suppliers, subconsultants of any tier, or any of their representatives, officers, agents or employees.

Nothing contained in this Release and Certificate of Final Payment shall have any effect on, nor be construed in any way to relieve CONTRACTOR of its obligations under the provisions of the above Contract and all Change Orders thereto, if any, which by their nature survive completion of the work including, without limitation, warranties, guaranties and indemnities.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR'S SIGNATURE BLOCK

## **VII .CALIFORNIA EDUCATION CODE REQUIREMENTS**

Prior to commencing work, Consultant will be required to provide Tuberculosis certification and criminal background and fingerprinting certification in forms provided by the Authority via the District Appendix C.

Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that any contractor or consultant performing work on the Project while on District property shall complete fingerprinting and criminal background investigations for all employees assigned to the Project. The selected Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the Authority and the governing board of the District that the employee has not been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c), in accordance with Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District or the Authority, or acting as independent contractors of the Consultant. Verification of compliance with this section shall be provided in writing to the Authority and the District prior to each individual's commencement of employment or performing any portion of the services described in this RFP and prior to permitting contact with any District student.

The selected Consultant's employees will be required to provide proof that they have been free of Tuberculosis (TB) within a year from the date of consultant contract award. Consultant's employees may have the tests completed with their own physician, or they can use the clinics listed in the District's list of approved facilities (Attachment F), or by performing a TBCB Adult TB Risk Assessment form.

**Replace section 9-1.17D(3) with:**

The Engineer will respond in writing within 45 days of receipt of the claim for claims of \$50,000 or less; within 60 days of receipt of the claim statement for claims over \$50,000 but less than or equal to \$375,000; or within 75 days of receipt of claim statement for claims over \$375,000.

Should it be necessary, the Engineer may request, in writing within 30 days of receipt of the claim, any additional information supporting the claim when the claim is \$375,000 or less. For claims over \$375,000, the request for additional information must be provided in writing within 45 days of receipt of the claim.

Upon receipt of the request for additional information from the Engineer, you must prepare and provide the information. The Engineer and you will agree on a timeframe for receipt of this information.

For claims of \$50,000 or less, The Engineer's written response to the claim, as further documented, shall be submitted within 15 days after receipt of the additional information or further documentation, if requested, or within the same period of time taken by you to produce the additional information or requested documentation, whichever is greater.

For claims over \$50,000 but less than or equal to \$375,000, the Engineer's written response to the claim, as further documented, shall be submitted within 30 days after receipt of the additional information or further documentation, if requested, or within the same period of time taken by you to produce the additional information or requested documentation, whichever is greater.

For claims more than \$375,000, The Engineer's written response to the claim, as further documented, will be submitted within 60 days after receipt of the additional information or further documentation, if requested, or within the same period of time taken by you to produce the additional information or requested documentation, whichever is greater.

If you dispute the Engineer's written response, or the Engineer fails to respond within the time prescribed, you may so notify the Engineer, in writing, either within 15 days of receipt of the Engineer's response or within 15 days of the Engineer's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the claims in dispute. Upon such demand, the Engineer will schedule a meet and confer conference within 30 days for settlement of the dispute.

For claims of \$375,000 or less, if after the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to Public Contract Code section 20104.2 until the time the claim is denied by the CCTA, including any period of time utilized by the meet and confer conference.

The informal conference is an informal meeting allowing the contractor and Authority the opportunity to make presentations in support of previously submitted written information for claims response identified as disputed. If requested, the Engineer and other personnel involved with the contract or others such as legal counsel or experts on the issue related to the claim may attend the informal conference to assist in resolving the claims under review.

If a complete resolution of claim is found after the meet and confer conference, Authority will issue a Final Payment with 45 days after the meet and confer conference by issuing a change order compensating the contractor for the agreed upon amount. The change order must state that the payment is for full resolution of the claim specified and shall constitute an accord and satisfaction of said claims. The contractor must provide a Release and Certificate of Final Payment as a condition precedent to Final Payment.

If meet and confer conference fails to yield a complete claim resolution but Authority finds merit in a portion of the claim, a Contract Change Order will be processed unilaterally and will run a semi-final estimate within 45 days after the conclusion of the meet and confer conference.

If meet and confer conference fails to yield a complete claim resolution and the parties remain in the same position as they were prior to the meet and confer conference. The Authority will issue a letter denying the claim within 45 days after the conclusion of the meet and confer conference.

Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by the Authority, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for alternative dispute resolution by the contractor.

**9-1.17D(3)(a) Government Code Claim**

In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the contractor must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the Authority. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by the contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, the contractor shall be barred from bringing and maintaining a valid lawsuit against the Authority.

**Delete to section 9-1.22.**