

STATE OF LOUISIANA

US 90 (I-49 SOUTH)
ALBERTSON'S PARKWAY TO
AMBASSADOR CAFFERY
DESIGN-BUILD PROJECT

LAFAYETTE PARISH

STATE PROJECT NO. H.010620
FEDERAL AID PROJECT NO. H010620

REQUEST FOR PROPOSALS
CONTRACT DOCUMENTS

DB SECTION 114
FEDERAL REQUIREMENTS



DB SECTION 114

FEDERAL REQUIREMENTS

DB 114-1 REQUIREMENTS FOR FEDERAL AID PARTICIPATION PROJECTS

The Design-Builder shall comply and require its Subcontractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in DB Appendix 114A – Federal Requirements Appendix. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions.

DB 114-2 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION IN FEDERAL-AID CONSTRUCTION CONTRACTS

This project is a Disadvantaged Business Enterprise (DBE) goal project. In accordance with the Required Contract Provisions for DBE Participation in Federal Aid Design-Build Contracts contained in Appendix 114A, the DBE goal for approved subcontracting work on this Project is 5% of the total Lump Sum Contract Price. The Design-Builder shall submit LA_DOTD Form OMF-1A (DB) (Request to Sublet) and have it approved by the LA DOTD before any subcontract work is done on the Project. Only those businesses certified by the LA DOTD as DBEs may be utilized in fulfillment of the DBE goal requirement. Such businesses are those certified by the Louisiana Unified Certification Program on the basis of ownership and control by persons found to be socially and economically disadvantaged in accordance with Section 8(a) of the Small Business Act, as amended, and Title 49, Code of Federal Regulations, Part 26 (49 CFR 26).

DB 114-3 NON-DISCRIMINATION; EQUAL OPPORTUNITY

The Design-Builder shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin, or sex in the performance of the Work under the Contract Documents. The Design-Builder shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by the Design-Builder 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 LA DOTD deems appropriate (subject to the Design-Builder's rights to notice and opportunity to cure set forth in this Contract).

The Design-Builder shall include this DB Section 114-3 in every subcontract (including purchase orders and in every subcontract of any Affiliate for the Work), and shall require that they be included in all subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

The Design-Builder confirms for itself and all Subcontractors that Design-Builder and each Subcontractor has an equal employment opportunity policy ensuring Equal Employment Opportunity (EEO) without regard to race, color, national origin, sex, age, religion, or handicap, and that Design-Builder and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion, or national origin. The Design-Builder shall comply with all applicable laws relating to EEO and nondiscrimination and shall require its Subcontractors to comply with such provisions, including those set forth in the

Required Contract Provisions for Federal-Aid Construction Contracts and the LA DOTD's Supplemental Specifications for Female and Minority Participation in construction which are both included in Appendix 114A.

DB 114-4 PREVAILING WAGES

The Design-Builder shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including the Davis-Bacon Act, and as provided in Appendix 114A. The Design-Builder shall comply and cause its Subcontractors to comply with all laws pertaining to prevailing wages.

It is the Design-Builder's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Contract is in effect, the Design-Builder shall bear the cost of such changes and shall have no claim against the LA DOTD on account of such changes. Without limiting the foregoing, no claim will be allowed which is based upon the Design-Builder's lack of knowledge or a misunderstanding of any such requirements or the Design-Builder's failure to include in the Lump Sum Contract Price adequate increases in such wages over the duration of this Contract.

The Design-Builder shall comply and cause its Subcontractors to comply with all laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements, and of prevailing wage rates.

DB 114-5 BUY AMERICA PROVISIONS

Pursuant to the "Buy America Provisions" of the Surface Transportation Assistance Act (STAA) of 1982 as promulgated by current FHWA regulation 23 CFR 635.410 and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amendment to (STAA), all steel and iron materials permanently installed on this project shall be manufactured, including application of a coating, in the United States, unless a waiver of these provisions is granted. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. The request for waiver must be presented in writing to the LA DOTD by the Design-Builder. Such waiver may be granted if it is determined that:

- A) The application of Buy America Provisions would be inconsistent with the public interest or
- B) Such materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Minimal use of foreign steel and iron materials will be allowed without waiver provided the cost of these materials does not exceed 0.1 percent of the Lump Sum Contract Price or \$2,500, whichever is greater; however, the Design-Builder shall make written request to the LA DOTD's Construction Engineering Administrator for permission to use such foreign materials and shall furnish a listing of the materials, their monetary value, and their origin and place of production.

The burden of proof for the origin and place of production and any request for waiver is the responsibility of the Design-Builder.

Prior to the use of steel and iron materials in the project, the Design-Builder shall furnish Mill Test Reports to the LA DOTD's Project Manager for such steel and iron materials, accompanied by a certification stating that the Mill Test Reports represent the steel and iron materials to be furnished and that such materials were produced and fabricated in the United States.

Pig iron and processed, pelletized, and reduced iron ore are exempt from the Buy America Provisions.

DB 114-6 PARTICIPATION IN JOB TRAINING

If the Design-Builder desires to participate in job training, as provided by the LA DOTD's Supplemental Specifications for On-the-Job Training which is included in Appendix 114A, the Design-Builder shall submit a written request to the Department's Project Manager with a copy to the Compliance Program Section.

According to the design formula, the number of potential trainees has been established as one. For the purposes of reimbursement, this number of trainees has been translated into an estimated one thousand trainee hours. The pay item for Trainee Reimbursement will be established in the Contract in accordance with the Supplemental Specifications for On-The-Job Training in Appendix 114A and the above hours.

Should the design formula not indicate that the Contract could support training, the Design-Builder may still train upon the approval of the LA DOTD.

DB 114-7 FEDERAL-AID PARTICIPATION

When the United States government participates in the cost of the Work covered by the Contract, the Work shall be under the supervision of the State through the LA DOTD, but subject to inspection and approval of the proper official of the United States government, in accordance with applicable federal statutes, and rules and regulations pursuant thereto. Such inspection shall not make the federal government a party to the Contract and will not interfere with the rights of either party thereunder.

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APPENDIX 114A

FEDERAL REQUIREMENTS APPENDIX



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FEDERAL REQUIREMENTS APPENDIX
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ATTACHMENT A

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

REQUIRED PROVISIONS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with federal funds, and therefore all of the statutes, rules, and regulations promulgated by the federal government and applicable to work financed in whole or in part with federal funds will apply to such Work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Attachment A – Louisiana Department of Transportation and Development Required Provisions for Federal-Aid Construction Projects." When utilized in the "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," the following terms will have the following meanings:

- A) "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA" shall be construed to mean LA DOTD or its authorized representative, including the Department's Project Manager;
- B) "Contractor," "prime contractor," "bidder," or "prospective primary participant" shall be construed to mean the Design-Builder or its authorized representative, including any of its Key Personnel;
- C) "Contract" or "prime contract" shall be construed to mean the Design-Build (DB) Agreement between Design-Builder and LA DOTD for the Project, including all of the Contract Documents referenced therein;
- D) "Subcontractor," "supplier," "vendor," "prospective lower tier participant," or "lower tier subcontractor" shall be construed to mean any Subcontractor or Supplier; and
- E) "Department," "agency," or "department or agency entering into this transaction" shall be construed to mean the LA DOTD, except where a different department or agency is specified.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the Contract for this Work that each Proposer file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such Contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted Proposal. A form to make the non-collusion affidavit statement required by 23 U.S.C. 112 is included in the Request for Proposals (RFP). (*See* Instructions to Proposers, Appendix C – Proposal Forms, Form of Proposal.)

CONVICT PRODUCED MATERIALS

- A) Federal Highway Administration federal-aid projects are subject to 23 Code of Federal Regulations (CFR) 635.417, entitled "Convict produced materials."

- B) Materials produced after July 1, 1991, by convict labor may only be incorporated in a federal-aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison; or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in federal-aid highway construction projects, and the cumulative annual production amount of such materials for use in federal-aid highway construction does not exceed the amount of such materials produced in such project for use in federal-aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

- A) As required by 49 CFR 18.36(i)(10), the Design-Builder and its Subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Design-Builder and Subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof.
- B) The Design-Builder agrees to include this section in each subcontract at each tier, without modification except as appropriate to identify the Subcontractor that will be subject to its provisions.

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

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.

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

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

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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

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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

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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

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women employed in each work classification on the project;

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

2. Withholding

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

payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors

shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the 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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

authorized by the department or agency with which this transaction originated.

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

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

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

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

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily

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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.

ATTACHMENT B

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**REQUIRED CONTRACT PROVISIONS FOR
DBE PARTICIPATION IN FEDERAL AID DESIGN-BUILD CONTRACTS
(DBE GOAL PROJECT)**

A. AUTHORITY AND DIRECTIVE: The Code of Federal Regulations, Title 49, Part 26 (49 CFR Part 26) as amended and the Louisiana Department of Transportation and Development's (DOTD) Disadvantaged Business Enterprise (DBE) Program are hereby made a part of and incorporated by this reference into this contract. Copies of these documents are available, upon request, from DOTD Compliance Programs Office, P.O. Box 94245, Baton Rouge, LA 70804-9245.

B. POLICY: It is the policy of the DOTD that it shall not discriminate on the basis of race, color, national origin, or sex in the award of any United States Department of Transportation (US DOT) financially assisted contracts or in the administration of its DBE program or the requirements of 49 CFR Part 26. The DOTD shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification of failure to carry out the approved DBE program, the US DOT may impose sanctions as provided for under 49 CFR Part 26 and may in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).

C. DBE OBLIGATION: The design-builder, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The design-builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the design-builder 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 DOTD deems appropriate.

The preceding policy and DBE obligation shall apply to this design-build contract and shall be included in the requirements of any subcontract. Failure to carry out the requirements set forth therein shall constitute a breach of contract and, after notification by DOTD, may result in termination of the contract, a deduction from the contract funds due or to become due the design-builder or other such remedy as DOTD deems appropriate. The design-builder is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial. The term DBE is inclusive of women business enterprises (WBE) and all obligations applicable to DBE shall apply to firms certified and listed as WBE.

D. FAILURE TO COMPLY WITH DBE REQUIREMENTS: The design-builder that is awarded this contract and all subcontractors are hereby advised that failure to carry out the requirements set forth above and in Section G shall constitute a breach of contract and, after notification by DOTD may result in action taken by DOTD as specified in Heading G(6) below. Failure to comply with the DBE requirements shall include but not be limited to failure to meet the established goal and/or failure to submit documentation of good faith efforts; failure to exert a reasonable good faith effort (as determined by DOTD) to meet established goals; and failure to realize the DBE participation set forth on approved Form CS-6AAA (DB) and attachments. The utilization of DBE is in addition to all other equal opportunity

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requirements of the contract. The design-builder shall include the provisions in Sections B, C and D of these provisions in subcontracts so that such provisions will be binding upon each subcontractor, regular dealer, manufacturer, consultant, or service agency.

E. ELIGIBILITY OF DBE: The DOTD maintains a current list containing the names of firms that have been certified as eligible to participate as DBE on US DOT assisted contracts. This list is not an endorsement of the quality of performance of the firm but is simply an acknowledgment of the firm's eligibility as a DBE. Only DBE listed on this list may be utilized to meet the established DBE goal for these projects.

F. COUNTING DBE PARTICIPATION TOWARD DBE GOALS: DBE participation toward attainment of the goal will be credited on the basis of total subcontract prices agreed to between the design-builder and subcontractors for the work or portions of work being sublet as reflected on Form CS-6AAA (DB) and attachments, in accordance with the DOTD DBE Program, and the following criteria.

- (1) Credit will only be given for use of DBE that are certified by the Louisiana Unified Certification Program. Certification of DBE by other agencies is not recognized.
- (2) The total value of subcontracts awarded for construction and services to an eligible DBE is counted toward the DBE goal provided the DBE performs a commercially useful function. The design-builder is responsible for ensuring that the goal is met using DBE that perform a commercially useful function.

The design-builder shall operate in a manner consistent with the guidelines set forth in the DOTD DBE Program. A commercially useful function is performed when a DBE is responsible for the execution of a distinct element of work by actually managing, supervising, and performing the work in accordance with standard industry practices except when such practices are inconsistent with 49 CFR Part 26 as amended, and the DOTD DBE Program, and when the DBE receives due compensation as agreed upon for the work performed. To determine whether a DBE is performing a commercially useful function, the DOTD shall evaluate the work subcontracted in accordance with the DOTD DBE Program, industry practices and other relevant factors. When an arrangement between the design-builder and the DBE represents standard industry practice, if such arrangement erodes the ownership, control or independence of the DBE, or fails to meet the commercially useful function requirement, the design-builder will not receive credit toward the goal.

- (3) A DBE design builder may count only the contract amount toward DBE participation for work he/she actually performs and for which he/she is paid. Any subcontract amounts awarded to certified DBE by a DBE prime will also be credited toward DBE participation provided the DBE subcontractor performs a commercially useful function.
- (4) A design-builder may count toward the DBE goal 100 percent of verified delivery fees paid to a DBE trucker. The DBE trucker must manage and supervise the trucking operations with its own employees and use equipment owned by the DBE trucker. No credit will be counted for the purchase or sale of material hauled unless the DBE trucker is also a DOTD certified DBE supplier. No credit will be counted unless the DBE trucker is an approved subcontractor.
- (5) A design-builder may count toward the DBE goal that portion of the dollar value with a joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture. Such crediting is subject to a favorable DOTD review of the joint venture agreement. The joint venture agreement shall include a detailed breakdown of the following:

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- a. Contract responsibility of the DBE for specific items of work.
- b. Capital participation by the DBE.
- c. Specific equipment to be provided to the joint venture by the DBE.
- d. Specific responsibilities of the DBE in the control of the joint venture.
- e. Specific manpower and skills to be provided to the joint venture by the DBE.
- f. Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

(6) A design-builder may count toward the DBE goal only expenditures for materials and supplies obtained from DBE suppliers and manufacturers in accordance with the following:

- a. The DBE supplier assumes actual and contractual responsibility for the provision of materials and supplies.
- b. The design-builder may count 100 percent of expenditures made to a DBE manufacturer provided the DBE manufacturer operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the design-builder.
- c. The design-builder may count 60 percent of the expenditures to DBE suppliers who are regular dealers but not manufacturers, provided the DBE supplier performs a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory, and selling materials regularly to the public. Dealers in bulk items such as steel, cement, aggregates and petroleum products are not required to maintain items in stock, but they must own or operate distribution equipment. The DBE supplier shall be certified as such by DOTD.
- d. A DBE may not assign or lease portions of its supply, manufactured product, or service agreement without the written approval of the DOTD.

(7) A design-builder may count toward the DBE goal reasonable expenditures to DBE firms including fees and commissions charged for providing a bona fide service; fees charged for hauling materials unless the delivery service is provided by the manufacturer or regular dealer as defined above; and fees and commissions for providing any bonds or insurance specifically required for the performance of the contract.

(8) The design-builder will not receive credit if the design-builder makes direct payment to the material supplier. However, it may be permissible for a material supplier to invoice the design-builder and DBE jointly and be paid by the design-builder making remittance to the DBE firm and material supplier jointly. Prior approval by DOTD is required.

(9) The design-builder will not receive credit toward the DBE goal for any subcontracting arrangement contrived to artificially inflate the DBE participation.

G. DOCUMENTATION AND PROCEDURE: This project has specific DBE goal requirements set forth in the design-build contract. The design-builder hereby certifies that:

- (1) The goal for DBE participation prescribed in the design-build contract shall be met or exceeded and arrangements will be made with certified DBE or good faith efforts made to meet the goal will be demonstrated.

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(2) Affirmative actions have been taken to seek out and consider DBE as potential subcontractors. The design-builder shall contact DBE to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain, on file, proper documentation to substantiate their good faith efforts

(3) Form CS-6AAA (DB) and "Attachment to Form CS-6AAA (DB)" shall be submitted by the design-builder at least 45 days prior to the work being performed by each DBE performing work under the contract. Submittals **must** be entered online at <http://www.dotd.la.gov/administration/compliance/cs6aaa/home.aspx> within 45 days of the subcontractor starting work. If necessary, the Good Faith Efforts Documentation Form will also be filled out online at this time. Once reviewed and after the Form CS-6AAA (DB) and attachments are approved, an email will be sent back to the design-builder to obtain the required signatures. After signatures are obtained, the original forms must then be received by the DOTD Compliance Programs Office within 30 days of the subcontractor starting work.

- a. The names of DBE subcontractors that will actually participate in meeting the contract goal; and
- b. A complete description of the work to be performed by the DBE; and
- c. The total dollar value of work that can be credited toward the contract goal; and
- d. Any assistance to be provided to the DBE; and
- e. The original signature of each DBE and the design-builder attesting that negotiations are in progress and that it is the intention of the parties to enter into a subcontract within 30 calendar days.

It shall be the design-builder's responsibility to ascertain the certification status of designated DBEs. The certification status will be determined as of the date of submission of Form CS-6AAA (DB) and attachments. An extension of time for submittal of Form CS-6AAA (DB) and attachments will not be granted. Questionable technical points will be cleared with the DOTD Compliance Programs Office within the time period allowed. If the documentation required is not provided in the time and manner specified, DOTD will take the actions specified in Heading (6) below.

(4) If the design-builder is not able to meet the DBE goal, the DBE firms that can meet a portion of the goal shall be listed on the form CS-6AAA (DB). Form CS-6AAA (DB) and attachments shall be completed and submitted in accordance with Heading (3) above. Form CS-6AAA (DB) shall indicate the DBE participation which has been secured along with documentation of good faith efforts. The design-builder shall document and submit justification stating why the goal could not be met and demonstrate the good faith efforts as shown in Section J.

For consideration, good faith efforts shall include the requirements listed in these provisions as well as other data the contractor feels is relevant.

(5) Form CS-6AAA (DB) and attachments, and documentation of good faith efforts, when appropriate, will be reviewed by DOTD. The information provided shall be accurate and complete.

(6) Unless good faith efforts is established, a design-builder's failure, neglect, or refusal to submit Form CS-6AAA (DB) and attachments committing to meet or exceed the DBE goal within the specified time frame shall constitute a breach of contract and, after notification by

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DOTD, may result in termination of the contract; a deduction from the contract due or to become due the design-builder; or other such remedy as DOTD deems appropriate. The DOTD DBE Oversight Committee will review the design-builder's reasons for not meeting these DBE Provisions and make a determination.

(7) The design-builder has the right to appeal the DOTD's findings and rulings to the DOTD Chief Engineer. The design-builder may present information to clarify the previously submitted documentation. The decision rendered by the DOTD Chief Engineer will be administratively final. There shall be no appeal to the US DOT.

H. POST AWARD COMPLIANCE

(1) If the contract is awarded and subsequently executed, such award and execution will not relieve the design-builder of the responsibility to continue exerting good faith efforts. The design-builder shall submit documentation of good faith efforts <http://www.dotd.la.gov/administration/compliance/cs6aaa/home.aspx> with requests to sublet prior to approval of subcontracting work being performed on the project.

(2) The design-builder shall establish a program which will effectively promote increased participation by DBE in the performance of contracts and subcontracts. The design-builder shall also designate and make known to the DOTD a liaison officer who will be responsible for the administration of the design-builder's DBE program.

(3) The design-builder shall enter into subcontracts or written agreements with the DBE identified on Form CS-6AAA (DB) and attachments for the kind and amount of work specified. The subcontracting requirements of the contract will apply. The design-builder shall submit copies of subcontracts or agreements with DBE to DOTD upon request.

(4) The design-builder shall keep each DBE informed of the construction progress schedule and allow each DBE adequate time to schedule work, stockpile materials, and otherwise prepare for the subcontract work.

(5) At any point during the project when it appears that the scheduled amount of DBE participation may not be achieved, the design-builder shall provide evidence demonstrating how the goal will be met.

(6) If the design-builder is unable to demonstrate to the DOTD's satisfaction that it failed to achieve the scheduled DBE participation and that good faith efforts have been used to obtain the scheduled contract participation, the DOTD may withhold an amount equal to the difference between the DBE goal and the actual DBE participation achieved as damages.

(7) When the DOTD has reason to believe the design-builder, subcontractor, or DBE may not be operating in compliance with the terms of these DBE provisions, to include, but not be limited to the encouragement of fronting, brokering, or not providing a commercially useful function, the DOTD will conduct an investigation of such activities with the cooperation of the parties involved. If the DOTD finds that any person or entity is not in compliance, the DOTD will notify such person or entity in writing as to the specific instances or matters found to be in noncompliance.

At the option of the DOTD, the person or entity may be allowed a specified time to correct the deficiencies noted and to achieve compliance. In the event that the person or entity cannot

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achieve compliance, or fails or refuses to do so, the DOTD reserves the right to initiate action against the design-builder which may include but not be limited to terminating the contract; withholding payment equal to the shortfall amount until corrective action is taken; or other action the DOTD deems appropriate. The design-builder has the right to appeal the DOTD's finding and rulings to the DOTD Chief Engineer. The decision rendered by the DOTD Chief Engineer will be administratively final.

The design-builder may present additional information to clarify that previously submitted. Any new information not included in the original submittal will not be used in the final determination. The decision rendered by the DOTD Chief Engineer will be administratively final.

(8) To ensure that the obligations under subcontracts awarded to subcontractors are met, the DOTD will review the design-builder's efforts to promptly pay subcontractors for work performed in accordance with the executed subcontracts. The design-builder shall promptly pay subcontractors and suppliers, including DBE, their respective subcontract amount within 14 calendar days after the design-builder receives payment from DOTD for the work satisfactorily performed by the subcontractors in accordance with Louisiana Revised Statute 9:2784. The design-builder shall provide the DBE with a full accounting of any deductions made from the DBE's payment at the time the check is delivered. Retainage may not be held by the design-builder. Delay or postponement of payment to the subcontractor may be imposed by the design-builder only when there is evidence that the subcontractor has failed to pay its labor force and suppliers for materials received and used on the project. Delay or postponement of payment must have written approval by the Project Manager. Failure to promptly pay subcontractors or to release subcontractors' retainage shall constitute a breach of contract and after notification by the DOTD may result in (1) a deduction from the contract funds due or to become due the design-builder, (2) disqualification of a design-builder as a proposer or bidder on future projects, or (3) any other such remedy under the contract as DOTD deems appropriate. All subcontracting agreements made by the design-builder shall include the current payment to subcontractors' provisions as incorporated in the contract. All disputes between design-builders and subcontractors relating to payment of completed work or retainage shall be referred to the DBE Oversight Committee. Members of the DBE Oversight Committee are: a designee by the Chief Engineer; the DOTD Compliance Programs Director; and an FHWA Division Representative.

(9) The design-builder shall submit DOTD Forms OMF-1A (DB), Request to Sublet and OMF-2A (DB), Subcontractor's EEO Certification. These forms shall be approved by DOTD before any subcontract work is performed.

(10) DOTD reserves the right to withhold any payment from the design-builder when it is determined that a DBE is not performing a commercially useful function or that achievement of the goal is in jeopardy. Payment may be withheld in the amount of the DBE goal that is in jeopardy until either the design-builder submits to DOTD a revised plan for achieving the contract goal and the plan is approved, or the DBE goal amount in question has been met.

(11) The DOTD will monitor the design-builder's DBE involvement during the contract, the level of effort by the design-builder in meeting or exceeding the goal requirements in the contract, the design-builder's attempts to do so, and the efforts in soliciting such involvement. If, at the completion of the project, the design-builder has failed to meet the DBE goal and has not demonstrated good faith efforts or obtained a waiver or reduction of the goal, DOTD will withhold an amount equal to the difference between the DBE goal and the actual DBE participation achieved as damages.

I. SUBSTITUTIONS OF DBE FIRMS

- (1) The design-builder shall conform to the scheduled amount of DBE participation.
- (2) Contract work designated to be performed by the DBE on Form CS-6AAA (DB) and attachments shall be performed by the designated DBE or DOTD approved substitute. Substitutions of named DBE shall be approved in writing by the DOTD Compliance Programs Section. Substituted DBE shall not commence work until the design-builder is able to demonstrate that the listed DBE is unable to perform because of default, overextension on other jobs, or other acceptable justification. It is not intended that a design-builder's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for change. Substitution of DBE will be allowed only when the DBE is unable to perform due to default, overextension on other jobs, or other similar justification. Evidence of good faith efforts exerted by the design-builder shall be submitted to DOTD for approval. Work eliminated from the project will not diminish the design-builder's DBE participation.
- (3) Under no circumstances will a design-builder perform work originally designated to be performed by a DBE without prior written approval from the DOTD Compliance Programs Section.
- (4) When a listed DBE is unwilling or unable to perform the items of work specified in the Form CS-6AAA (DB) and attachments, the design-builder shall immediately notify the DOTD Compliance Programs Section.

When a design-builder's request to be relieved of the obligation to use the named DBE results in a DBE Goal shortfall, the design-builder shall immediately take steps to obtain another certified DBE to perform an equal amount of allowable credit work or make documented good faith efforts to do so. The new DBE's name and designated work shall be submitted to the DOTD for approval using Form OMF-1A, Request to Sublet, prior to proceeding with the work.

If the design-builder is unable to replace a defaulting DBE with another DBE for the applicable work, a good faith effort shall be made to subcontract other work to DBE for the purpose of meeting the goal. The DOTD Compliance Programs Section will determine if the design-builder made an acceptable good faith effort in awarding work to DBE firms. Any disputes concerning good faith efforts will be referred to the DBE Oversight Committee. The DOTD Compliance Programs Section may allow a waiver or adjustment of the goal as may be appropriate, depending on individual project circumstances.

J. GOOD FAITH EFFORTS: Good faith efforts are required by the design-builder when the DBE goals established for a contract are not met, or at any time during the contract when achievement of the DBE goal is in jeopardy. It is the design-builder's responsibility to provide sufficient evidence for DOTD to ascertain the efforts made. The design-builder shall demonstrate good faith efforts to maximize participation by DBE during the life of the contract. Good faith efforts include personal contacts, follow-ups and earnest negotiations with DBE. DOTD will consider, at a minimum, the following efforts as relevant, although this listing is not exclusive or exhaustive and other factors and types of efforts may be relevant:

- (1) Efforts made to select portions of the work to be performed by DBE in order to increase the likelihood of achieving the stated goal. It is the design-builder's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of work or materials consistent with the availability of DBE subcontractors and suppliers to assure meeting the

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goal for DBE participation. Selection of portions of work are required to at least equal the DBE goal in the contract.

(2) Written notification at least 14 calendar days prior to the electronic submission of Form CS6-AAA (DB) and attachments, as required in Heading G(3), which solicits a reasonable number of DBE interested in participation in the contract as a subcontractor, regular dealer, manufacturer, or consultant for specific items of work. The design-builder shall provide notice to a reasonable number of DBE that their interest in the contract is being solicited, with sufficient time to allow the DBE to participate effectively. The design-builder shall seek DBE in the same geographic area from which it generally seeks subcontractors for a given project. If the design-builder cannot meet the goal using DBE from the normal area, the design-builder shall expand its search to a wider geographic area.

(3) Demonstrated efforts made to negotiate in good faith with interested DBE for specific items of work include:

- a. The names, addresses and telephone numbers of DBE contacted. The dates of initial contact and whether initial solicitations of interest were followed-up personally, by mail, or by phone to determine the DBE interest.
- b. A description of the information provided to DBE regarding the nature of the work, the plans and specifications and estimated quantities for portions of the work to be performed.
- c. A statement of why additional agreements with DBE were not reached.
- d. Documentation of each DBE contacted but rejected and the reasons for rejection. All bids and quotations received from DBE subcontractors whether verbal or written, and the design-builder's efforts to negotiate a reasonable price shall be submitted. Rejecting a DBE's bid because it was not the lowest quotation received will not be a satisfactory reason without an acceptable explanation of how it was determined to be unreasonable. A statement that the DBE's quotation was more than the design-builder's price proposal for an item or items will not be acceptable.
- e. Copies of all bids and quotations received from DBE subcontractors and an explanation of why they were not used.
- f. Scheduling meetings to discuss proposed work or to walk the job-site with DBE.
- g. Informing DBE of any pre-bid conferences scheduled by the DOTD.
- h. Assisting DBE in obtaining bonding, insurance, or lines of credit required by the design-builder.
- i. Evidence of DBE contacted but rejected as unqualified, accompanied by a reason for rejection based on a thorough investigation of the DBEs capabilities.
- j. Any additional information not included above which would aid the DOTD in evaluation of the design-builder's good faith efforts.

(4) The following are examples of actions that will not be accepted as justification by the design-builder for failure to meet DBE contract goals:

- a. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.

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- b. Rejection of a DBE bid or quotation based on price alone.
- c. Failure to contract with a DBE because the DBE will not agree to perform items of work at the unit price bid.
- d. Failure to contract with a DBE because the design-builder normally would perform all or most of the work in the contract.
- e. Rejection of a DBE as unqualified without sound reasons based on a thorough investigation of their capabilities.
- f. Failure to make more than mail solicitations.

K. RECORD KEEPING REQUIREMENTS: The design-builder shall keep such records as are necessary for the DOTD to determine compliance with the DBE contract obligations. These records shall include the names of subcontractors, including DBE; copies of subcontracts; the type of work being performed; documentation such as canceled checks and paid invoices verifying payment for work, services, and procurement; and documentation of correspondence, verbal contacts, telephone calls, and other efforts to obtain services of DBE. When requested, the design-builder shall submit all subcontracts and other financial transactions executed with DBE in such form, manner and content as prescribed by DOTD. The DOTD reserves the right to investigate, monitor and/or review actions, statements, and documents submitted by any design-builder, subcontractor, or DBE.

L. REPORTING REQUIREMENTS: The design-builder shall submit monthly reports on DBE involvement. At the conclusion of each month the design-builder shall submit the Form CP-1A (DB), DESIGN-BUILDER'S MONTHLY DBE PARTICIPATION, to the project manager to verify actual payments to DBE for the previous month's reporting period. These reports will be required until all DBE subcontracting activity is complete or the DBE Goal has been achieved. Reports are required regardless of whether or not DBE activity has occurred in the monthly reporting period.

Upon completion of all DBE participation, the design-builder shall submit the Form CP-2A (DB), DBE FINAL REPORT, to the DOTD Compliance Programs Section with a copy to the project manager detailing all DBE subcontract payments. When the actual amount paid to DBE is less than the subcontract amount, a complete explanation of the difference is required. If the DBE goal is not met, documentation supporting good faith efforts shall be submitted. Failure to submit the required reports will result in the withholding of payments to the design-builder until the reports are submitted. All payments due subcontractors which affect DBE goal attainment, including retainage, shall be paid by the design-builder before the DOTD releases the final payment.

The DOTD reserves the right to conduct an audit of DBE participation prior to processing the final payment and at any time during the work.

M. APPLICABILITY OF PROVISIONS TO DBE DESIGN-BUILDERS: These provisions are applicable to all design-builders including each design-builder that is a DBE (DBE design-builder). If the DBE design-builder sublets any portion of the contract, the DBE design-builder shall comply with provisions regarding design-builder and subcontractor relationships. A DBE design-builder may count only the contract amount toward DBE participation for work that he/she actually performs and any amounts awarded to other certified DBE subcontractors that perform a commercially useful function.

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FORM CS-6AAA (DB)

DESIGN-BUILDER'S ASSURANCE OF DBE PARTICIPATION

S.P.# H.010620	Contract Amount: \$
F.A.P.# H010620	DBE Goal Percentage
Award Date:	DBE Goal Dollar Value: \$

By its signature affixed hereto, the design-builder assures the DOTD that one of the following situations exists (check only one box):

- The project goal will be met or exceeded.
- A portion of the project goal can be met, as indicated below. Good faith effort documentation is attached. DBE Goal Participation Amount _____ % \$ _____.

The design-builder certifies that each firm listed is currently on the DBE list as maintained by DOTD and is certified for the items of work shown on the attachment(s). The design-builder having assured that the goal for DBE participation prescribed in the design-build contract will be met or exceeded, or that the portion of the DBE goal will be met or exceeded, attests that negotiations are in progress or complete and that a subcontract(s) will be executed with the firm(s) listed below within 30 calendar days.

NAME OF DBE FIRM(S)	INTENDED SUBCONTRACT PRICE ¹

¹For suppliers list only the value of the subcontract that can be credited toward the DBE goal. This amount shall be equal to the amount shown for the supplier on the Attachment to Form CS-6AAA (DB). Details are listed on the attachment(s) to Form CS-6AAA (DB).

The design-builder assessed the capability and availability of named firm(s) and sees no impediment to prevent award of subcontract(s) as described on the attachments.

The design-builder shall evaluate the subcontract work or services actually performed by the DBE to ensure that a commercially useful function is being served in accordance with the Required Contract Provisions for DBE Participation in Federal Aid Construction Contracts. The design-builder understands that no credit toward the DBE goal will be allowed for DBE that do not perform a commercially useful function. The design-builder has a current copy of the DOTD DBE Program Implementation Guide which details the methods of operation that are acceptable on projects containing DBE goals. Copies of this guide may be obtained by calling the DOTD Compliance Programs Section at (225) 379-1382.

NAME OF DESIGN-BUILDER	
AUTHORIZED SIGNATURE	
TYPED OR PRINTED NAME	
TITLE	
DESIGN-BUILDER'S DBE LIAISON OFFICER (typed or printed name)	
PHONE NUMBER	
DATE	TAX ID#

07/09

Louisiana Department of Transportation and Development

FHWA Goal Project
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**FORM CP-1A (DB)
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DESIGN-BUILDER'S MONTHLY DBE PARTICIPATION**

STATE PROJECT NO. H.010620	DESIGN-BUILDER:
FEDERAL AID PROJECT NO. H010620	
ESTIMATE NO.	REPORT PERIOD: _____ TO _____

DOTD CERTIFIED DBE SUBCONTRACTOR OR SUPPLIER	WORK PERFORMED AND PAID THIS ESTIMATE PERIOD	AMOUNT PAID THIS MONTH ¹	TOTAL PAID TO DATE ¹

¹For suppliers, list total amount paid and the 60 percent value counted toward the goal.

This report covers the previous estimate period and shall be submitted to the Project Manager or the Project Manager's designated representative with the current month's pay estimate. Estimates will be withheld until the required form is submitted. Questions should be directed to the DOTD Compliance Programs Section at (225) 379-1382.

The Design-Builder certifies that the above amounts were paid to the listed DBEs and that documentation of these payments is available for inspection. Project Manager or Project Manager's designated representative has reviewed this form.
(Signature of Project Manager or Project Manager's designated representative).

Authorized Signature
Typed or Printed Name
Title
Phone No.
Date

07/09

Louisiana Department of Transportation and Development

FHWA Goal Project
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**FORM CP-2A (DB)
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DBE FINAL REPORT**

STATE PROJECT NO. H.010620	DBE GOAL AMOUNT: \$	DESIGN-BUILDER:
FEDERAL PROJECT NO. H010620	CONTRACT AMOUNT: \$	
PARISH(ES) Lafayette	AWARD DATE:	

DOTD CERTIFIED DBE SUBCONTRACTOR OR SUPPLIER	WORK PERFORMED AND PAID	TOTAL DOLLAR AMOUNT PAID TO SUB OR SUPPLIER (60%)

This is to certify that \$ _____ has been paid to Disadvantaged Business Enterprise Subcontractors/Suppliers listed above.

Authorized Signature	
Typed or Printed Name	
Title	
Date	

Parish or County _____ State of _____

Subscribed and sworn to, before me, this _____ day of _____, A.D. 20 _____

Notary Public _____

My commission expires: _____

07/09

Louisiana Department of Transportation and Development

FHWA Goal Project
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DBE GOOD FAITH EFFORT DOCUMENTATION (DB)

The intent of this form is to document the good faith effort attempts made by the design-builder in soliciting DBE firms to meet the DBE project goal. Please note that the project goal will not be waived and the design-builder must make efforts to achieve the goal throughout the life of the contract.

Every work type where there is a certified DBE, the design-builder must submit the form as follows:

- 1 available DBE – must contact 1 DBE
- 2-5 available DBEs – must contact 3 DBEs minimum
- 6-7 available DBEs – must contact 4 DBEs minimum
- 8-9 available DBEs – must contact 5 DBEs minimum
- 10 or more available DBEs – must contact 6 DBEs minimum

All information submitted on this form is subject to audit by the DBE Goal Committee

Date Submitted: _____

State Project Number: _____ Parish: _____

Design-Builder Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone Number: _____

Email Address: _____

Project Goal Percentage: _____

Commitment Percentage: _____

Unattained Percentage: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Authorized Representative Signature: _____

Title: _____ Date: _____

Louisiana Department of Transportation and Development

FHWA Goal Project
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DBE GOOD FAITH EFFORT DOCUMENTATION

Work Type Number	Description of Work, Service or Material		DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					
Work Type Number	Description of Work, Service or Material		DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					
Work Type Number	Description of Work, Service or Material		DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					

EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION

The following is a list of types of actions a design-builder should take when documenting good faith efforts. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

SOLICITATION /ADVERTISEMENT EFFORTS - should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The design-builder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The design-builder should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

NEGOTIATION EFFORTS - should include your efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. You are encouraged to break out contract work into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation you should make plans/specifications available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a design-builder should use good business judgment by considering price and capability, as well as, project goals. A design-builder is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your good faith effort submittal which supports the price differential.

ASSISTANCE EFFORTS - should include your efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Design-builders are encouraged to assist firms with independently securing/obtaining these resources. A design-builder may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible with DOTD's prior approval. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.

ADDITIONAL EFFORTS - could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provide assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Design-builders are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

Louisiana Department of Transportation and Development

FHWA Goal Project
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Form OMF-1A (DB)
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
REQUEST TO SUBLET AND EXTRACT OF SUBCONTRACT
FOR FEDERAL-AID DESIGN-BUILD CONTRACTS

DATE: _____

STATE PROJECT NO. **H.010620**

FEDERAL AID PROJECT NO. **H010620**

NAME OF PROJECT **US 90 (I-49 South) Design-Build Project**

Notes to design-builder:

You may use the attachment if additional space is needed.

As design-builder of the above project, I request you consent to sublet the following items of work to the undersigned Subcontractor

<u>Description of Work to be Performed</u>	<u>Subcontractor Price</u>

I, as design-builder, understand and agree that the subcontract shall not relieve me of my liability under the contract and bonds, and that the subcontract work is a part of the work covered by a written agreement I have with the subcontractor which incorporates all requirements and pertinent provisions of the design-build contract, including, but not limited to, on federal-aid projects, the Required Contract Provisions for Federal Aid Contracts, as required by 23 CFR 635.116(b), and the Required Contract Provisions for DBE Participation as required by 49 CFR 26.13(b). The terms of this request shall be deemed and shall constitute a part of the written subcontract for the work listed hereinabove.

DESIGN-BUILDER _____ PHONE NO. _____ FAX NO. _____

NAME OF OWNER (use only if company is a Sole Proprietorship) _____

ADDRESS _____ LICENSE NO. _____

FEDERAL TAX I.D. _____

BY: _____ TITLE _____

(Signature)

Louisiana Department of Transportation and Development

FHWA Goal Project
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I, as subcontractor, understand and agree that no part of the above listed subcontract work shall be further sublet without written consent. I certify that the subcontracted work is covered by a written agreement with the design-builder which states the work shall be performed in accordance with the DOTD construction contract with the design-builder for this project, and that the written subcontract agreement incorporates all requirements and pertinent provisions of the prime contract, including, but not limited to, on federal-aid projects, the Required Contract Provisions for Federal Aid Contracts, as required by 23 CFR 635.116(b), and the Required Contract Provisions for DBE Participation as required by 49 CFR 26.13(b) and that the minimum wages stated in said prime contract shall be applied to the subcontracted work, and the terms of this request shall be deemed and shall constitute a part of the written subcontract for the work listed hereinabove.

SUBCONTRACTOR PHONE NO. FAX NO.
NAME OF OWNER (use only if company is a Sole Proprietorship)
ADDRESS LICENSE NO.
FEDERAL TAX I.D.
BY:

(Signature)
REVIEWED BY: DATE APPROVED BY: Compliance Programs
DATE:

RETURN TO:
DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT ATTENTION: COMPLIANCE
PROGRAMS SECTION
P. O. BOX 94245
BATON ROUGE, LA 70804-9245

DATE:

**LOUISIANA DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT
SUBCONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY
CERTIFICATION
FEDERAL-AID DESIGN-BUILD CONTRACTS**

Certification with regard to the performance of previous contracts or subcontracts subject to the equal opportunity clause and the filing of required reports – federal-aid contracts.

STATE PROJECT NO. **H.010620**

FEDERAL AID PROJECT NO. **H010620**

PARISH **Lafayette**

NAME OF DESIGN-BUILDER _____

The proposed Subcontractor certifies that it has , has not , participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that it has , has not , filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

By: _____
COMPANY
(Signature)

DATE _____

TITLE

The above certification is required by the Equal Employment Opportunity (EEO) regulations of the Secretary of Labor (41 CFR 60-1.7 (B)(1)), and must be submitted by Proposers and proposed Subcontractors in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. Generally only contracts or subcontracts of \$10,000 or under are exempt.

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed Design-builders, their members, and Subcontractors that have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports shall submit a report covering the delinquent period or such other period specified by the Federal Highway Administration or the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form OMF-2A (DB)

**ATTACHMENT C
LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
SUPPLEMENTAL SPECIFICATIONS**

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. General

a. Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Orders 11246 and 11375 are set forth in Required Contract Provisions (Form FHWA-1273) and these Supplemental Specifications which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal Aid Highway Act of 1968. The requirements set forth herein shall constitute the specific affirmative action requirements for project activities under this contract and supplement the EEO requirements set forth in the Required Contract Provisions.

b. The contractor shall work with the Department and the Federal Government in carrying out EEO obligations and in their review of his activities under the contract.

c. The contractor and all his subcontractors holding subcontracts (not including material suppliers) of \$10,000 or more shall comply with the following minimum specific requirement activities of EEO. The EEO requirements of Executive Order 11246, as set forth in the Federal-Aid Policy Guide 23 CFR 230A, are applicable to material suppliers as well as contractors and subcontractors. The contractor shall include these requirements in every subcontract of \$10,000 or more with such modification of language as necessary to make them binding on the subcontractor.

2. EEO Policy

The contractor shall accept as his operating policy the following statement which is designed to further the provision of EEO to all persons without regard to their race, color, religion, sex or national origin, and to promote the full realization of EEO through a positive continuing program:

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 or national origin. 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, preapprenticeship and on-the-job training.

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3. EEO Officer

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

4. Dissemination of Policy

a. 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, shall be made fully cognizant of and shall 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 shall be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and then at least once every 6 months, at which time the contractor's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's EEO obligations within 30 days after their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project shall be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. To make the contractor's EEO policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor shall take the following actions:

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

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

5. Recruitment

a. When advertising for employees, the contractor shall include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements shall be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor shall, through his EEO Officer, identify sources of potential minority group employees and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

If the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor shall encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.

6. 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 or national origin. The following procedures shall be followed.

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

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c. The contractor shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor shall 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 shall promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, shall attempt to resolve such complaints, and shall 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 shall inform every complainant of all of his avenues of appeal.

7. Training and Promotion

a. The contractor shall assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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 job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. If the Supplemental Specifications for Job Training are provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

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

d. The contractor shall periodically review the training and promotion potential of minority group and women employees and shall encourage eligible employees to apply for such training and promotion.

8. Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor shall use his best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent shall include the procedures set forth below:

a. The contractor shall use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor shall use best 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 or national origin.

c. The contractor shall 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 Department and shall set forth what efforts have been made to obtain such information.

d. If the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor shall, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) If the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these specifications, such contractor shall immediately notify the Department.

9. Subcontracting

a. The contractor shall use his best efforts to solicit bids from and utilize minority group subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Department.

b. The contractor shall use his best efforts to ensure subcontractor compliance with their EEO obligations.

10. Records and Reports

a. The contractor shall keep such records as necessary to determine compliance with the contractor's EEO obligations. The records kept by the contractor shall indicate:

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(1) the number of minority and nonminority group members and women employed in each work classification on the project,

(2) the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) the progress and efforts being made in locating, hiring, training, qualifying and upgrading minority and female employees, and

(4) the progress and efforts being made in securing the services of minority group subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department and the Federal Highway Administration.

c. The contractor shall submit an annual report to the Department each July for the duration of the project, indicating the number of minority, women and nonminority group employees currently engaged in each work classification required by the contract work. This information shall be reported on Form PR-1391. If job training is required, the contractor shall furnish Form DOTD 03-37-0014.

ATTACHMENT D

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
SUPPLEMENTAL SPECIFICATIONS**

FEMALE AND MINORITY PARTICIPATION IN CONSTRUCTION

The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the director of OFCCP. Execution of the contract by the successful bidder and any subsequent subcontracts will be considered the contractor's and subcontractor's commitment to the EEO provisions contained in this notice.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

AREA	PARISH OR COUNTY	GOAL (%)
FEMALE PARTICIPATION		
-	All Covered Areas	6.9
MINORITY PARTICIPATION (UNDER NEW ORLEANS PLAN)		
-	* See Note Below	20 to 23
MINORITY PARTICIPATION (NOT UNDER NEW ORLEANS PLAN)		
1	Jefferson LA, Orleans LA, St. Bernard LA, St. Tammany LA	31.0
2	Assumption LA, Lafourche LA, Plaquemines LA, St. Charles LA, St. James LA, St. John the Baptist LA, Tangipahoa LA, Terrebonne LA, Washington LA, Forrest MS, Lamar MS, Marion MS, Pearl River MS, Perry MS, Pike MS, Walthall MS	27.7
3	Ascension LA, East Baton Rouge LA, Livingston LA, West Baton Rouge, LA	26.1
4	Concordia LA, East Feliciana LA, Iberville, LA, Pointe Coupee LA, St. Helena LA, West Feliciana LA, Adams MS, Amite MS, Wilkinson, MS	30.4
5	Lafayette LA	20.6
6	Acadia LA, Evangeline LA, Iberia LA, St. Landry LA, St. Martin LA, St. Mary LA, Vermillion LA	24.1
7	Calcasieu LA	19.3
8	Allen LA, Beauregard LA, Cameron LA, Jefferson Davis LA, Vernon LA	17.8
9	Grant LA, Rapides LA	25.7
10	Avoyelles LA, Bienville LA, Bossier LA, Caddo LA, Claiborne LA, DeSoto LA, Natchitoches LA, Red River LA, Sabine LA, Webster LA, Winn LA	29.3
11	Ouachita LA	22.8
12	Caldwell LA, Catahoula LA, East Carroll LA, Franklin LA, Jackson LA, LaSalle LA, Lincoln LA, Madison LA, Morehouse LA, Richland LA, Tensas LA, Union LA, West Carroll LA,	27.9

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(Required FHWA Provisions)
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*These goals apply only to those contractors signatory to the New Orleans Plan and only with respect to those trades which have unions participating in said Plan. The New Orleans Plan Covered Area is as follows: The parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles, St. John the Baptist, Plaquemines, Washington, Terrebonne, Tangipahoa (that area east of the Illinois Central Railroad), Livingston (that area southeast of the line from a point off the Livingston and Tangipahoa Parish line adjacent from New Orleans and Baton Rouge), St. James (that area southeast of a line drawn from the Town of Gramercy to the point of intersection of St. James, Lafourche and Assumption Parishes), and Lafourche.

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

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

3. The contractor shall provide written notification to the Regional Administrator of the Office of Federal Contract Compliance Programs (555 Griffin Square Building, Dallas, TX 75202) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and geographical area in which the contract is to be performed.

4. As used in this Notice and in the contract, the "covered area" is that area shown in the foregoing table in which the project is located.

The following Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts in excess of \$10,000. Execution of the contract by the successful bidder and any

subsequent subcontracts will be considered the contractor's and subcontractor's commitment to the EEO provisions contained in these Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. If the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, he shall include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is required to comply with his obligations under the EEO clause, and to make good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractor or subcontractors toward a goal in an

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approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any OFCCP office or from federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications will be based on his effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign 2 or more women to each construction project. The contractor shall ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

- community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor has taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman set by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting his EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendent, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than 1 month prior to the date for the acceptance of

applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above describing the openings, screening procedures and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3.
- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet his goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A goal for minorities and a separate goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a group is employed

in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a minority group of women is underutilized).

10. The contractor shall not use the goals or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The contractor shall not enter into a subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling his obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as the standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors will not be required to maintain separate records.

15. Nothing herein shall be construed as a limitation on the application of other laws which establish different standards of compliance or on the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and subcontractors holding subcontracts (not including material suppliers) in excess of \$10,000

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shall submit for every month of July during which work is performed, employment data as contained under Form FHWA-1391 in accordance with instructions included thereon.

**ATTACHMENT E
WAGE DETERMINATION**

General Decision Number: LA130017 01/04/2013 LA17

Superseded General Decision Number: LA20120017

State: Louisiana

Construction Type: Highway

Counties: Ascension, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Grant, Iberville, Lafayette, Livingston, Pointe Coupee, Rapides, St Helena, St Martin, West Baton Rouge and West Feliciana Counties in Louisiana.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number Publication Date
0 01/04/2013

ENGI0406-001 10/28/2010

	Rates	Fringes
Mechanic.....	\$ 25.40	8.05

LABO0207-001 07/01/2006

Calcasieu and Cameron Counties

	Rates	Fringes
LABORER: Common or General.....	\$ 12.79	1.73

* LABO0762-004 01/01/2005

Grant, Lafayette, and Rapides Counties

	Rates	Fringes
LABORER: Common or General.....	\$ 11.00	3.50

LABO1177-003 09/01/2005

Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Martin, West Baton Rouge, and West Feliciana Counties

Louisiana Department of Transportation and Development

	Rates	Fringes
LABORER: Common or General.....	\$ 15.00	2.77

 SULA2011-005 08/17/2011

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 18.22	4.48
CEMENT MASON/CONCRETE FINISHER...	\$ 20.03	4.24
IRONWORKER, REINFORCING.....	\$ 17.49	
Power equipment operators:		
Asphalt Paver.....	\$ 17.20	4.97
Backhoe/Excavator/Trackhoe..	\$ 16.13	
Broom/Sweeper.....	\$ 14.05	
Bulldozer.....	\$ 16.40	
Crane.....	\$ 24.30	
Grader/Blade.....	\$ 15.88	
Milling Machine.....	\$ 15.38	2.14
Roller (Asphalt and Dirt Compaction).....	\$ 14.29	4.23
Trencher.....	\$ 14.38	

Truck drivers:		
Dump Truck.....	\$ 12.69	
Water Truck.....	\$ 13.79	

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the

cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor

Louisiana Department of Transportation and Development

200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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ATTACHMENT F

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
SUPPLEMENTAL SPECIFICATIONS
ON-THE-JOB TRAINING**

The Louisiana Department of Transportation and Development (LADOTD) has partnered with the Louisiana Associated General Contractors (LAGC) to ensure that on-the-job training is provided on a voluntary basis by contractors performing work on LADOTD's federally assisted construction projects.

The LAGC has committed that its member contractors will enroll a minimum of 15 trainees statewide during the period July 1 through June 30 annually. It is anticipated that this annual training goal will be increased in future years as participation in the program grows.

The LADOTD on-the-job training program will be monitored by the Compliance Programs Section. At all times it will be the responsibility of the contractor to comply with the Job Training Supplemental Specifications. LAGC will provide support to their member contractors in the area of on-the-job training as they would in any contractual activity. LAGC has committed to assisting contractors in areas such as recruitment, record keeping, graduation certificates, and ongoing encouragement of contractors to participate in the training program. LAGC has expressed their willingness to work with LADOTD and FHWA in making the contracting industry as strong as possible in all areas, including on-the-job training.

Non-LAGC members are encouraged to participate in the LADOTD on-the-job training program. No aspect of the LADOTD/LAGC partnership is designed to eliminate the right of any non-LAGC member to participate in the training program described in these specifications. If any non-LAGC member does not utilize a previously approved training program, he/she is directed to develop and submit a training program to LADOTD for approval by LADOTD and FHWA.

Although training under this contract is not limited to minorities and females, contractors should be aware that one of the objectives of the training program is to increase the participation and skills of minorities and females in highway construction. Contractors must exert good faith efforts to comply with the Equal Employment Opportunity contract requirements governing recruitment and upgrading when seeking to fill vacancies in the work force and select candidates for the training program. Adequate documentation of good faith efforts should be maintained and submitted to the Compliance Programs Section Training Program Manager (TPM) when requested.

These supplemental specifications are in implementation of 23 USC 140(a). Training under this contract shall be optional to the successful bidder, provided the item for which training is requested is less than 70 percent complete. If the contractor elects to provide training under the

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On-The-Job Training

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contract as established in these specifications, he may submit a written request to the project engineer with a copy to the Construction Section. A plan change will be prepared to incorporate a pay item using the trainee hours stated in the Special Provisions elsewhere herein. Training will only be reimbursed after the approval of this plan change.

It is intended that training under these supplemental specifications be in crafts directly related to highway construction. Therefore, training in classifications such as clerk-typist, secretary, bookkeeper, fireman, office engineer, estimator, timekeeper, and unskilled or common laborer will not be approved for participation under these supplemental specifications.

No employee shall be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journey person status or in which he/she has been employed as a journey person. The contractor shall satisfy this requirement by completing the Contractor's Trainee Enrollment & Interview Form for each potential trainee. The completed form shall be electronically submitted to the TPM for review and approval.

The contractor will be reimbursed \$3.00 per hour of training provided in accordance with an approved training program. Reimbursement will be made for training hours in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other sources do not specifically prohibit the contractor from receiving other reimbursement. The contractor will be reimbursed for the number of trainee hours actually trained on the project in accordance with these supplemental specifications.

The contractor will be credited for each trainee employed on the project that is currently enrolled or becomes enrolled in an approved training program and will be reimbursed for such trainees as provided in these supplemental specifications.

The minimum length and type of training for each classification selected by the contractor will be established in the training program approved by the Department, Federal Highway Administration (FHWA), and/or Office of Federal Contract Compliance Programs (OFCCP). The Department, FHWA, and/or OFCCP will approve a program if it is reasonably calculated to meet the Equal Employment Opportunity obligations of the contractor and to qualify the average trainee for journey person status in the classification concerned by the end of the training period. Apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training or with a state apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable if it is being administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts.

It is normally expected that a trainee will begin training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his/her work classification or until he/she has completed the training program.

Enrollment of trainees in excess of the required number will be permitted, with approval, to allow the contractor to maintain the required continuous effort to complete the training of individual trainees.

Trainees will be paid at least 60 percent of the appropriate minimum journey person's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent of the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by these supplemental specifications.

The contractor, prior to the start of training, shall provide written notice to each person to be trained under these supplemental specifications of that person's designation as a trainee, the training program and classification under which training will be provided, the length of the training program, and the hourly wage rate to be paid to the trainee. This requirement shall be fulfilled by use of the Contractor's Trainee Enrollment & Interview Form.

Upon graduation, the contractor shall issue the trainee a certification showing the type and length of training satisfactorily completed along with a permanent photo identification card designating the bearer as a graduate journey person of the appropriate training program.

The contractor shall electronically submit the Contractor's Trainee Enrollment & Interview Form for each employee on the project who is enrolled as a trainee in an approved training program or apprenticeship program. The trainee enrollments shall be submitted to the TPM within the first payroll period in which each trainee or apprentice is assigned to the project.

In order to collect the \$3.00 per hour reimbursement for training, the contractor shall electronically submit to the project engineer's office each week that training is conducted on the project the Contractor's OJT Weekly Reporting Form along with the payroll. For projects where weekly payroll submission is not required, the Contractor's OJT Weekly Reporting Form shall be submitted to the project engineer's office.

At anytime during the life of the project, provided that the item for which training is requested is less than 70 percent complete, a subcontractor may elect to train. The subcontractor should follow the steps described above in order to participate in the on-the-job training program. If the

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subcontractor does not utilize a previously approved training program, he/she is directed to develop and submit a training program to the TPM for approval by LADOTD and FHWA.

Contractors are to train according to their work force needs and as training opportunities exist on a project. If a trainee graduates from a training classification, training opportunities no longer exist in the approved classification, or a contractor's work force needs change, a trainee could be enrolled in a different classification. The Contractor's OJT Change Form is to be used when these circumstances necessitate enrolling a current trainee or a graduate in a new classification. Multiple enrollments of an individual should not be used to diminish the objectives of these specifications, but to enhance the trainee's career growth, benefit the contractor's operations, and improve the contracting industry overall.

All required forms can be found on the LADOTD website on the Compliance Programs page and the Construction Letting Information page under Doing Business with DOTD. Instructions for completing any required form may be obtained from the TPM.

It is the goal of the LADOTD/LAGC partnership to maintain a voluntary on-the-job training program, but revisions to the program may be deemed necessary should participation fall below acceptable levels.