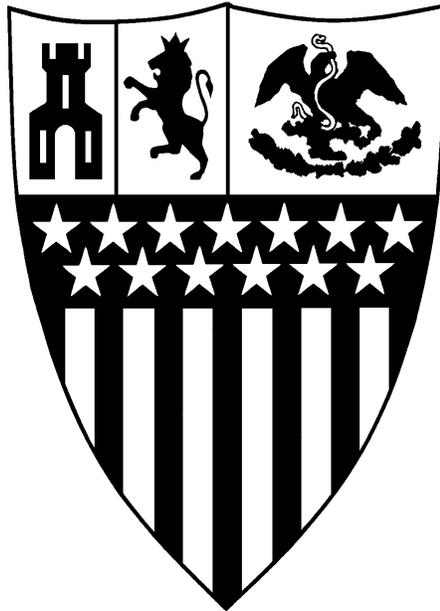


# City of Santa Fe, New Mexico



**City of Santa Fe  
Public Works Department  
Roadway & Trails Engineering Division  
P.O. Box 909, 200 Lincoln Avenue  
Santa Fe, New Mexico 87504-0909  
Phone (505) 955-6654  
Fax (505) 955-6476**

**Project Manual & Construction Agreement  
Led Countdown Pedestrian Head Installation At Various Intersections  
CN: S100270  
Bid Number '16/23/B**

**BID DUE: January 5, 2016 at 2:00 P.M.  
PURCHASING OFFICE  
CITY OF SANTA FE  
2651 SIRINGO ROAD - BUILDING "H"  
SANTA FE, NEW MEXICO 87505**

**I, John J Romero, Registered Professional Engineer No. 16679, hereby certify that this manual was prepared by me, or directly under my supervision, and is true and correct to the best of my knowledge and belief.**

---

**John J. Romero**

**PE 16679**

**INDEX****LED COUNTDOWN PEDESTRIAN HEAD INSTALLATION AT VARIOUS INTERSECTIONS****CITY OF SANTA FE, NEW MEXICO**

<b>A.</b>	<b>Bidding Documents</b>	<b>A-1</b>
A.1	Advertisement For Bids.....	A-3
A.2	Bid Schedule.....	A-7
A.3	Instructions For Bidders.....	A-8
A.4	Bid Submittal.....	A-28
A.5	Bid Form.....	A-30
A.6	Bid Bond.....	A-36
A.7	Certification of Bidder Regarding Equal Employment Opportunity.....	A-37
A.8	Certification of Non-Segregated Facilities.....	A-38
A.9	Non-Collusion Affidavit of Prime Bidder.....	A-40
A.10	Non-Collusion Affidavit of Subcontractor.....	A-42
A.11	Subcontractor and Material Suppliers Listing.....	A-44
A.12	Required Boiler Plate Bid Documents for Federal Funded Projects	
•	Bidders List of Quoters for the (DBE) Program.....	A-46
•	Subcontractors Fair Practices Act Compliance.....	A-48
•	Non-Debarment Certification.....	A-5023
•	Certification of Federal-Aid Contract.....	A-54
•	Disclosure of Lobbying Activities.....	A-55
•	New Mexico Pay Equity Reporting Acknowledgement Executive Order.....	A-58
<b>B.</b>	<b>Contract Documents</b>	<b>B-1</b>
B.1	Construction Agreement.....	B-3
B.2	Performance Bond.....	B-11
B.3	Labor and Material Payment Bond.....	B-13
B.4	Required Boiler Plate Contract Documents for Federal Funded Projects	
•	On the Job Training Program and Special Provisions.....	B-16
•	Selected DBE Program Provisions for Disadvantaged Business.....	B-22
•	Special Provisions on Equal Employment Opportunity.....	B-41
•	Required Contract Provisions for Federal-Aid Construction Contracts.....	B-42
•	Special Provisions for Specific on EEO Responsibilities.....	B-54
•	Standard Federal EEO Construction Contract Specifications.....	B-60
•	Notice of Requirement of Affirmative Action to Ensure EEO.....	B-66
•	Subcontractor Prompt Pavement Provisions, Clarification of Good Cause and Prohibition of Cross-Project Offset.....	B-68
•	Notice to Contractors Cooperation with Utilities.....	B-70

•	Notice to Contractors Professional Services.....	B-71
•	Work Zone Safety.....	B-72
•	Inspector General Audits.....	B-76
•	Notice to Contractors for EEO Software Programs.....	B-77
•	Notice to Contractors for New Mexico Employee Health Coverage.....	B-78
•	Notice to Contractors for Subcontractor Payment and Performance Bonds.....	B-80
•	Indian Preference.....	B-81
•	Notice to Contractors for Bid Rigging.....	B-82
•	Labor Reporting and Submission of Weekly Payrolls.....	B-83
•	Notice to Contractors for Apprentices/Trainees.....	B-84
•	Notice to Contractors for Civil Right Act.....	B-85
•	Notice to Contractors for Help Stop Fraud, Waste and Abuse.....	B-86
•	Notice to Contractors for Applicable State Gross Receipts.....	B-87
•	Notice to Contractors for Wage Rates (1/3/14)-Federal Wage Rates NM-48.....	B-88
•	Notice to Contractors for Minimum Wage Rates.....	B-94
•	Certificate of Payment Claims.....	B-95
<b>C.</b>	Standard Specifications.....	C-1
C.1	Standard Specifications.....	C-3
<b>D.</b>	Special Provisions for Payroll Not Included Under Section B.4.....	D-1
D.1	Special Provisions For Minimum Wage Rate.....	D-3
D.2	Compliance with City of Santa Fe Living Wage Ordinance.....	D-3
D.3	Special Provisions For Submission of Weekly Payrolls.....	D-6
D.4	State Wage Decisions.....	D-7
<b>E.</b>	Notice to Contractors.....	E-1
<b>F.</b>	Special Provisions.....	F-1
F.1	Supplemental Specifications to the NMDOT Standard Specifications For Road & Bridge Construction, 2014 Edition and Special Provisions.....	F-4
<b>G.</b>	Additional Required Bidding Documents.....	G-1
•	Index.....	G-2
<b>H.</b>	Required Contract Provisions.....	H-1
•	Index.....	H-2

## **A. *Bidding Documents***

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**A.1 Advertisement For Bids**

CITY OF SANTA FE, NEW MEXICO

INVITATION TO BID NUMBER '16/23/B

SEALED BID FOR: **LED COUNTDOWN PEDESTRIAN HEAD  
INSTALLATION AT VARIOUS INTERSECTIONS**  
City of Santa Fe, New Mexico

TO BE OPENED AT: City of Santa Fe  
Purchasing Division  
2651 Siringo Road, Bldg. H  
Santa Fe, New Mexico 87505

TIME: 2:00 p.m. Local Prevailing Time

DATE: January 5, 2016

ADDRESSED TO: Purchasing Office  
2651 Siringo Road, Bldg H  
Santa Fe, New Mexico 87505

Bids will be received until the above time, then opened publicly at the Purchasing Division, 2651 Siringo Rd., Santa Fe, NM or other designated place, and read aloud.  
**BIDS RECEIVED AFTER THE ABOVE TIME WILL BE RETURNED UNOPENED.**

Contract documents may be reviewed at the Traffic Engineering Division of the City and also at the following plan rooms:

Builders News  
3435 Princeton, NE  
Albuquerque, NM 87107

Construction Reporter  
1609 Second, NW  
Albuquerque, NM 87102

McGraw Hill Dodge  
1615 University Blvd., NE  
Albuquerque, NM 87102

Reed Construction Data  
30 Technology Parkway South,  
Suite 500  
Norcross, GA 30092

ISQFT Plan Room  
308 W. Fillmore Suite 101  
Colorado Springs, CO 80907

Construction News Service  
4775 Centennial Blvd. #150  
Colorado Springs, CO 80919

OBTAINING CONTRACT DOCUMENTS: Plan drawings, specifications and contract documents may be obtained at the following address:

City of Santa Fe  
Traffic Engineering Division  
500 Market Street,  
Suite 200  
Santa Fe, New Mexico 87504

Upon application by a prospective bidder, **one** set of contract documents will be provided upon the condition that all such documents will be returned to the City of Santa Fe Traffic Engineering Division complete and in good condition within ten (10) business days after the date of bid opening. Otherwise, the City may elect to bill the plan holder appropriate reproduction fees for said documents.

Bids for the project will be presented in the form of a unit price bid. The bidder shall bid all items listed.

Each bidder must conform to the conditions specified in the section entitled "Instructions For Bidders".

**BID GUARANTEE:** Each bid shall be accompanied by an acceptable form of Bid Guarantee in an amount equal to at least five percent (5%) of the amount of the bid payable to the City of Santa Fe as a guarantee that if the bid is accepted, the Bidder will execute the Contract and file acceptable Performance and Labor and Material Payment Bonds within ten (15) days after the award of the Contract.

The bid shall also include a signed "Certificate of Bidder Regarding Equal Employment Opportunity", "Certificate of Non-segregated Facilities", a signed "Non-Collusion Affidavit of Prime Bidder", "Subcontractor Listing", and "Acknowledgement for Receipt of Addenda". The successful bidder shall, upon notice of award of contract, secure from each of his/her subcontractors a signed "Non-Collusion Affidavit of Subcontractor". Bidders must possess an applicable license to perform the work under this contract, provided for in the New Mexico Construction Industries Rules and Regulations.

The Bidding Documents contain a time for completion of the work by the successful bidder and further imposes liquidated damages for failure to comply with that time.

Performance Bond and Labor & Material Payment Bond, each 100% of the Contract sum, will be required of the successful bidder entering into the construction contract.

Bids will be held for sixty (60) days subject to action by the City.

**OWNERS RIGHTS RESERVED:** The City of Santa Fe, herein called the City, reserves the right to reject any or all bids and to waive any formality or technicality in any bid in the best interest of the City.

**PRE-BID CONFERENCE:** A pre-bid conference will be held December 22 at 2:00 p.m. at the 500 Market Street Suite 200, "Engine" conference room, Santa Fe, New Mexico 875041. The purpose of this conference will be for the clarification of the project requirements. Call Richard Devine at (505) 955-2320 for additional information.

The work to be performed with this project consists of furnishing all equipment, labor and materials for the installation of LED countdown pedestrian heads at various intersections, in accordance with the drawings, specifications, and other Contract Documents.

The project is subject to New Mexico Department of Workforce Solutions, Public Works Bureau (formerly NM Dept. of Labor, Labor and Industrial Division) Wage Rate Decision No. SF 11-0835 A.

**EQUAL OPPORTUNITY IN EMPLOYMENT:** All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. Bidders on this work will be required to comply with the Presidents Executive Order No. 11246 as amended.

ATTEST:



Mr. Robert Rodarte  
Purchasing Officer  
2651 Siringo Road, Bldg H  
Santa Fe, New Mexico 87505

Received by the SANTA FE NEW MEXICAN on date: 12/06/15

To be published on: 12/15/15

Received by the ALBUQUERQUE JOURNAL on date: 12/06/15

To be published on: 12/15/15

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## A.2 Bid Schedule

Advertisement: December 15, 2015

Issuance of Request for Bids: December 15, 2015

Pre-Bid Conference: A pre-bid conference will be held on December 22, 2015 at 2:00 p.m. at the City of Santa Fe Traffic Engineering Division located at 500 Market Street, Suite 200, "Engine" conference room, Santa Fe, New Mexico 87501. The purpose of this conference will be to discuss the project details and answer any questions and address concerns. Call Richard Devine at **(505) 955-2320** for additional information.

Receipt of Bids: January 5, 2015, at 2:00 PM local prevailing time at the City of Santa Fe, Purchasing Division, 2651 Siringo Road, Bldg. H, Santa Fe, New Mexico 87505, **(505) 955-5711**

Public Works Committee: January 11, 2016

Finance Committee: January 18, 2016

City Council: January 26, 2016

Dates of consideration to Public Works Committee, Finance Committee, and City Council, are tentative and may be changed without notice.

### A.3 Instructions For Bidders

Bids are requested by City of Santa Fe for Construction of LED Countdown Pedestrian Head Installation at Various Intersections in accordance with contract documents supplied by the City of Santa Fe, Public Works Department, Traffic Engineering Division.

1. LOCATION AND DESCRIPTION OF WORK: The work under this contract is located in or adjacent to the City of Santa Fe, New Mexico. The work consists of furnishing all equipment, labor and materials as specified in the work order plans.
2. TIME AND PLACE OF RECEIVING AND OPENING BIDS: This information will be found in the "Advertisement for Bids" form attached hereto. A bid received after the specified time will not be considered and will be returned to the bidder unopened.
3. SPECIFICATIONS AND CONTRACT DOCUMENTS
  - 3.1. SPECIFICATIONS: The construction of this project will be in accordance with the NEW MEXICO DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION, 2014 Edition.
  - 3.2. PLANS AND CONTRACT DOCUMENT DEPOSIT: The deposit for each set of bidding forms and documents as required in the "Advertisement for Bids" will be refunded to each bidder provided such documents are returned in good condition to the Engineer within ten (10) days after the bid opening date. An additional four (4) sets of bidding documents will be furnished to the successful bidder at no additional charge. Any additional sets requested will be issued to the successful bidder by the Engineer at the cost of reproduction.
4. DEFINED TERMS: Terms used in these Instructions to Bidders have the meanings assigned to them in Section 101 of the NMDOT (or NMSHTD) Standard Specifications as modified.
5. EXAMINATION OF BIDDING DOCUMENTS AND SITE: Before submitting his/her bid, each bidder must (a) examine the bidding documents thoroughly, (b) visit the site to familiarize himself/herself with local conditions that may in any manner affect performance of the work, (c) familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance of the work; and (d) carefully correlate his/her observations with the requirements of the contract documents. The submission of a Bid constitutes representation by Bidder that Bidder has complied with every requirement of this section and that the contract documents are sufficient in scope to indicate and convey understanding of all terms and conditions for performance of the work.

6. THE COMPLETE CONTRACT DOCUMENTS CONTAIN THE FOLLOWING: Everything that is bound herein, project plans and any standard specifications referenced herein.

7. INTERPRETATIONS:

1. **ADDENDA AND INTERPRETATIONS**

No oral interpretations of the meaning of the specifications or other pre-bid documents will be binding. Oral communications are permitted in order to make an assessment of need for an addendum. **ANY QUESTIONS CONCERNING THE BID SHOULD BE ADDRESSED PRIOR TO BID OPENING DATE.**

Every request for such interpretations should be in writing addressed to Robert Rodarte, Purchasing Officer, 2651 Siringo Road, Bldg. H, Santa Fe, New Mexico 87505 and to be given consideration must be received at least (5) five days prior to the date fixed for the opening of bids.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be delivered to all prospective bidders not later than three days prior to the date fixed for the opening of the bids. Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

8. **BID SECURITY:** Bid security in the amount of 5% of the amount of the bid shall accompany the bid submittal and must be in the form of a certified or bank cashier's check made payable to the City or a bid bond issued by a surety licensed to conduct business in the State of New Mexico, or other supplies in a form satisfactory to the City. The Bid Security of the successful bidder will be retained until he/she has executed the Construction Agreement and furnished the required Contract Security, whereupon it will be returned. If he/she fails to execute and deliver the Construction Agreement and furnish the required Contract Security within 10 days of the Notice of Award, the City may annul the Notice of Award and the Bid Security of that bidder will be forfeited. The Bid Security of any bidder whom the City believes to have a reasonable chance of receiving the award may be retained by the City until either the seventh day after the executed Construction Agreement is delivered by the City to Contractor and the required Contract Security is furnished or the sixty-first day after the bid opening, whichever is earlier. Bid security of other bidders will be returned within thirty days of the bid opening, or sooner.

## 9. RESIDENT & LOCAL PREFERENCE

### 9.1 INTENT AND POLICY

The city recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The city also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

### 9.2 APPLICATION-IN-STATE AND OUT OF STATE BIDDERS

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978).

To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico Taxation and Revenue Department.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

### 9.3 NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 8% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be

considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the city Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the city Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

#### 9.4 APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean that:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The local preference for proposals shall be 1.10.

New Mexico Resident Veteran Business Preference: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue .

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business preference.

Bids for Goods and Services. When bids for the purchase of goods or services pursuant to Section 22 are received, the lowest responsive bid received from those bidders in the first category listed below shall be multiplied by the Preference Factor. If the resulting price of that bid receiving the preference is lower than or equal to the lowest bid of all bids received, the contract shall be awarded to that bidder receiving the preference. If no bids are received from bidders in the first category, or if the bid receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of bidders listed to determine if the bid qualifies for award. The priority of categories of bidders is:

- (1) Local business.
- (2) Resident business.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Resident Preference. No resident business or manufacturer, as defined, shall be given any preference in the awarding of contracts for furnishing goods or services to the city, unless it shall have qualified with the State Purchasing Agent as a resident business or manufacturer and obtained a certification number as provided in Section 13-1-22 NMSA 1978. The certification number must be submitted with its bid for an offeror to qualify for this preference. The Central Purchasing Office shall determine if a resident preference is applicable to a particular offer on a case by case basis.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 5% for resident and 8% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

**New Mexico Resident Preference Number (if applicable)\_\_\_\_\_**

## INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. **DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.**
4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition:** The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

**Additional Documentation:** If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

# LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: \_\_\_\_\_

Business Name: \_\_\_\_\_

Principal Office: \_\_\_\_\_

Street Address                      City                      State                      Zip Code

City of Santa Fe Business License # \_\_\_\_\_ (Attach Copy to this Form)

Date Principal Office was established: \_\_\_\_\_ (Established date must be six months before date of Publication of this RFP or RFB).

## CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: \_\_\_\_\_

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

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn before me by \_\_\_\_\_ this \_\_\_\_\_, day of \_\_\_\_\_

My commission expires \_\_\_\_\_

Notary Public

SEAL

**YOU MUST RETURN THIS FORM WITH YOUR OFFER**

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10. **CONTRACT TIME:** The number of days for the completion of work (the contract time) is set forth in the Bid Form and will be included in the executed Construction Agreement.

11. **SUBCONTRACTORS, SUPPLIERS AND OTHERS:**

11.1. The Contractor, in the bid documents, must identify in writing to the City those portions of the work that he/she proposes to subcontract and after the Notice of Award, may only subcontract other portions of the work with the City's written consent.

11.2. Registration with the New Mexico Department of Workforce Solutions, Public Works Bureau (formerly NM Dept. of Labor, Labor and Industrial Division). A contractor or subcontractor that submits a bid valued at more than fifty thousand dollars (\$50,000) for a city project that is subject to the Public Works Minimum Wage Act (13-4-10 NMSA 1978) shall be registered with the New Mexico Department of Workforce Solutions, Public Works Bureau. The registration number shall be provided in the bid submitted for the contractor in the space provided and for subcontractors with work proposed over \$50,000 on the subcontractor form. After the bid opening, the registration number(s) will be verified by the City and the bid will be determined to be non-responsive and disqualified if the registration number(s) appear to be not valid and the contractor does not provide proof of the required registration for itself or its subcontractors with work proposed over fifty thousand dollars (\$50,000). It is the responsibility of the contractor and the subcontractors to ensure the registration is completed prior to the bid opening.

11.3. Contractor will not be required to employ any other subcontractor, other person or organization against whom he/she has reasonable objection.

11.4. The Contractor shall list all subcontractor names, addresses and type of work to be performed.

11.5. The threshold amount for this project is \$5,000. The General contractor must list all subcontractors who will perform work in excess of this threshold. Only one sub-contractor may be listed for each category as defined by the contractor. The Subcontractor Fair Practice Act (13-4-31 thru 14-3-43 NMSA 1988) shall apply.

11.6. **EXEMPTION:** In accordance with the "SUBCONTRACTOR'S FAIR PRACTICES ACT", Section 13-4-35, the Contractor shall not be required to submit a Subcontractor's Listing form with the bid for contracts for construction, improvement or repair of streets or highways, including bridges, underground utilities within easements, including but not limited to waterlines, sewer lines and storm sewer lines. The SUBCONTRACTOR'S

FAIR PRACTICES ACT shall apply, however, to that portion of contracts for construction, improvement or repair of streets or highways which covers street lighting and traffic signals.

The bidder shall list the subcontractor or material suppliers he/she proposes to use for all trades or items on the Subcontractor Listing Form attached to the Bidding Documents. If awarded the contract, the Bidder shall use the firm listed, or himself/herself if "General Contractor" has been listed, unless a request for a change or substitution is approved by the Owner of any reason as outlined herein.

11.7. For subcontract work involving the provision of "SUBCONTRACTOR'S FAIR PRACTICES ACT 13-4-31...43 NMSA 1978." summarized as follows, shall apply:

11.7.1. A Contractor may not substitute any subcontract or any subcontractor listed, unless the City approves the substitution based on the following situations:

11.7.1.1. The subcontractor fails or refuses to execute a contract due to bankruptcy or insolvency;

11.7.1.2. The subcontractor fails or refuses to perform;

11.7.1.3. The contractor demonstrates to the City that the listed subcontractor was due to an inadvertent clerical error;

11.7.1.4. Acceptance of an alternate by the City causes the original subcontractor's bid not to be low;

11.7.1.5. The contractor can substantiate to the City that a subcontractor's bid is incomplete; or

11.7.1.6. The subcontractor fails or refuses to meet bond requirements of the contractor.

11.7.2. Prior to approval of the contractor's request for substitution, the City shall give notice to the listed subcontractor by certified mail. The subcontractor shall have five working days to submit written objections to the City. Failure to respond shall constitute subcontractor's consent to the substitution. If written objections are received, the City shall give five working days notice of a hearing.

11.7.3. No other substitution of subcontractors may be permitted by the contractor, other than for requested change orders in the scope of the work or unless the contractor can show that no bids were received.

11.7.4. It shall be the responsibility of the subcontractor to be prepared to submit performance or payment bonds if requested by the contractor. If the subcontractor does not furnish such requested bonding, the contractor may substitute another subcontractor, as per the provisions of item 1 above. (The requirement of such bonding must be included in the contractor's written or published request for subcontract bids.)

11.7.5. If the contractor does not specify a subcontractor, he/she represents that he/she shall perform the work.

11.7.6. If the contractor is claiming an inadvertent clerical error, notice shall be given to the City and to the involved subcontractor within two working days of the bid opening. The subcontractor shall have six working days from the bid opening to submit written objections. Failure to respond shall constitute subcontractor's agreement that an error was made.

11.7.7. If determined to be an emergency, upon written finding, subcontracting may be permitted although not originally designated in the bid.

11.7.8. By State statute, violation of this act may allow the City to cancel the contract or assess the contractor a penalty up to 10% of the subcontract involved, but in no case less than the difference between the amount of the listed subcontractor and the subcontractor used. The contractor shall be entitled to a hearing after receiving a notice of intent to assess a penalty.

11.7.9. If a hearing is held, the dispute shall be stated in writing and the City shall evaluate the issues of both sides and render a determination within 10 days of the hearing and provide the parties with a written copy of the decision by certified mail. The City may also refer the matter to arbitration.

## 12. BID FORM:

12.1. The Bid Form is included in the bidding documents; additional copies may be obtained from Engineer.

12.2. Bid Forms must be completed in either ink or typewritten. The bid price of each item on the form must be stated in numerals and written

words; in case of an error in extensions in the unit price schedule the unit price shown in written words shall govern.

12.3. Bids by corporations must be executed in the corporate name by the president or a vice president (or other corporate office accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, his/her title must appear under his/her signature and the official address of the partnership must be shown below the signature.

12.5. All names must be typed or printed below the signature.

12.6. The bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

13. QUALIFICATION OF BIDS: All bidders must have a valid New Mexico Contractor's License appropriate to the work herein specified. All bidders shall be pre-qualified with the New Mexico Department of Transportation.

14. SUBMISSION OF BIDS: Bids shall be submitted at the time and place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the bidder, N.M. License Number, and accompanied by the Bid Security, list of subcontractors and other required documents. All blanks must be filled in. Conditional bids will not be considered. The envelope shall be addressed to:

Purchasing Office  
2651 Siringo Road, Bldg H  
Santa Fe, New Mexico 87505

No late bids will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope shall clearly be marked as stated above.

15. MODIFICATION AND WITHDRAWAL OF BIDS: Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the place where bids are to be submitted at any time prior to the opening of bids.

16. **BID OPENING PROCEDURE:** The person or persons opening the bids will adhere to the following procedure:

- 16.1. Bid - Name the Bidder and the Number of Bidder's New Mexico Contractor's License with a check for proper signatures.
- 16.2. Check for bid bond.
- 16.3. Non-Collusion Affidavit of Prime Bidder.
- 16.4. Submittal, acknowledgement of Addenda, if any.
- 16.5. Properly executed Bid Form.
- 16.6. EEO-1
- 16.7. Certification of Non-segregated Facilities.
- 16.8. Subcontractor's and Material Supplies Listing (as applicable)

If any of the above requirements have not been met, the bid shall be disqualified and considered a non-responsive bid. Any disqualified bids will not be read.

17. **BIDS TO REMAIN OPEN:** All bids shall remain open for sixty (60) days after the day of the bid opening, but the City may, in its sole discretion, release any bid and return the Bid Security prior to that date.

18. **AWARD OF CONTRACT:**

18.1. The City reserves the right to reject any and all bids and waive any and all informalities or technicalities and the right to disregard all nonconforming or conditional bids or counter bids.

18.2. The City reserves the right to award bid based upon the lowest base bid only or if alternates are to be awarded, the low bid for any combination of base bid and alternate(s). (Note that the listed order of alternates is not prioritized).

18.3. If a contract is to be awarded, it will be awarded to the lowest responsible bidder whose evaluation indicates to the City that the award will be in the best interests of the project and the City.

18.4. Simultaneously with delivery of the executed counterparts of the Agreement to the City, contractor shall deliver to the City the required Contract Bonds.

18.5. If a contract is to be awarded, the City will give the apparent successful bidder a Notice of Award within sixty (60) days after the day of the bid opening.

18.6. If the lowest responsible bidder has otherwise qualified, the lowest bidder may negotiate with the City for a lower bid if the lowest bid is within ten percent over budgeted project funds. No change in the original scope of

the terms or terms and conditions will be allowed. Terms and conditions refer to the contract requirements, warranties, and bonds. Negotiation may be permitted with product, materials, and equipment alternatives as determined to be in the best interest of the Owner.

19. **WAGE RATES:** The Bidder's attention is directed to the fact that wages to be paid on this project shall not be less than the higher of the two prevailing wage rates as listed by the New Mexico Department of Workforce Solutions, Public Works Bureau (formerly NM Dept. of Labor, Labor & Industrial Division) and the U.S. Department of Labor Wage Decision, if applicable. It shall be the successful Bidder's responsibility to inform himself/herself thoroughly of all state, federal and local laws and statutes pertaining to the employment of labor, the freedom of organization and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

20. **REQUIRED SUBMITTALS:**

- 20.1. Name of Bidder and NM Contractor License Number and types
- 20.2. Bid Bond
- 20.3. Non-Collusion Affidavit of Prime Bidder
- 20.4. Proposal, acknowledgement of Addenda, if any
- 20.5. Properly executed Bid Form
- 20.6. EEO-1
- 20.7. Certification of Non-segregated Facilities
- 20.8. Subcontractors Material Suppliers Listing (as applicable)

If any of the above requirements have not been met, the bid shall not be read.

21. **SUBSTITUTIONS:** The bid shall not be qualified by the proposal of substitutions for specified materials or equipment.

22. **PREFERENCES:** In the construction of this project, the City has no preference for any process, type of equipment, or kind of material, but will consider all processes, types of equipment or kinds of material offered on an usual competitive basis if they are in fact the equal to that specified and will accomplish the purpose intended. The City reserves the right to be the sole judge as to whether or not a different process, type of equipment or kind of material offered is in fact equal to that specified.

23. **LICENSE OR ROYALTY FEES:** Licenses and/or royalty fees for products or for processes must be paid for directly by the contractor.

24. **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND:** The contractor will be required to furnish surety bonds in an amount at least equal to one hundred percent (100%) each of the total contract price as security for

faithful performance of the contract and payment for all labor and materials. The surety company must be authorized to do business in the State of New Mexico and must be acceptable to the City of Santa Fe.

25. ADDENDUM: Each addendum shall be made a part of the contract documents to the same extent as though contained in the original documents and itemized listing thereof. Each bidder shall acknowledge receipt of each addendum in the space provided on the bid submittal form.

26. COLLUSION: No bidder shall be interested in more than one bid. Collusion among bidders or the submission of more than one bid under different names by any firms or individual shall be cause for rejection of all bids in question without consideration.

27. QUANTITIES: The quantities set forth in the bid submittal are estimated quantities on which bids will be compared and which will be the basis for award of contract. Payment will be made for the work actually performed.

28. UTILITY INSPECTION: All work done on the existing City owned utilities shall be inspected by a representative of the City before backfilling.

29. POWER OF ATTORNEY: Attorneys in fact who sign bonds must attach certified effective copies of their Power of Attorney to all bonds.

30. PRE-BID CONFERENCE: A pre-bid conference will be held on December 22, 2015 at 2:00 p.m. at the City of Santa Fe Community Services Conference Room, 120 South Federal Loop, Room 326, Santa Fe, New Mexico 87504. The purpose of this conference will be for the clarification of the project requirements.

### 31. PROTEST PROCEDURE

Any bidder, offeror, or contractor who is aggrieved in connection with a procurement may protest to the City Purchasing Director. The protest must be in writing and be submitted within fifteen (15) days after the facts or occurrences.

The complete procedures and requirements regarding protests and resolution of protests are available from the Purchasing Office upon request.

### 32. CONSIDERATION OF BIDS

#### 32.1. Receipt, Opening and Recording

32.1.1. Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and Alternates or Bid Items, if any, will be made available to the Bidders. Each Bid shall be open to public inspection.

## 32.2. Bid Evaluation and Award

32.2.1. It is the intent of the City to award a contract to the lowest responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not responsible Bidder. Post-Bid information that may be required of a Contractor as to qualifications.

32.2.2. If the Base Bid is within the amount of funds available to finance the construction contract, contract award will be made to the responsible Bidder submitting the low Bid; except that, if sufficient funds are available to fund alternates, the City may award the contract to the responsible Bidder submitting the low combined Bid within the amount of funds available (Base Bid plus Bid Alternates). Note that the listed order of Bid Alternates is not prioritized.

32.2.3. Discrepancies in the Bid form between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

## 32.3. Competitive Sealed Bids

32.3.1. Contracts solicited by competitive sealed bids shall require that the bid amount exclude applicable New Mexico Gross Receipts Taxes or applicable local option taxes, but that the City shall be required to pay the applicable taxes, including any increase in the applicable tax which becomes effective after the date the contract is entered into. The applicable Gross Receipts Tax shall be computed and shown as a separate amount on the Bid Submittal and on each request for payment made under the contract.

## 32.4. Notice of Award

A written Notice of Award shall be issued by the City after review and approval of the Bid and related documents by the Governing Authority, as defined in the Supplementary Conditions, with reasonable promptness.

### 32.5. Identical Bids

32.5.1. When two or more of the Bids submitted are identical in price and are the low Bid, the City Purchasing Agent or the City may:

32.5.1.1. Award pursuant to the multiple source award provisions of the Procurement Code;

32.5.1.2. Award to a resident business if the identical low Bids are submitted by a resident business and a non-resident business;

32.5.1.3. Award to a resident manufacturer if the identical low Bids are submitted by a resident manufacturer and a non-resident manufacturer;

32.5.1.4. Award by letter to one of the identical low Bidders;

32.5.1.5. Reject all Bids and re-solicit Bids or proposals for the required services, construction, or items of tangible personal property.

### 32.6. Cancellation of Award

32.6.1. When in the best interest of the public, the City may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the City.

## 33. POST-BID INFORMATION

### 33.1. Return of Bid Security

All Bid Security in the form of checks, except those of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained Bid Security of the unsuccessful of the two lowest Bidders, if in the form of a check, will be returned within fifteen (15) days following the award of contract. The retained Bid Security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the contract has been executed. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the City Purchasing Agent after the Notice of Award is sent by the City.

### 33.2. Notice to Proceed

The City will issue a written Notice to Proceed to the Contractor stipulating the date from which Contract time will be charged and the date Contract

Time is to expire, subject to valid modifications of the Contract authorized by Change Order.

### 33.3. Failure to Execute Contract

Failure to return the signed Contract with acceptable Contract Bonds and Certificate of Insurance within fifteen (15) calendar days after the date of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the bid security, which shall become damages sustained. Award may then be made to the next lowest responsible Bidder, or the work may be re-advertised and constructed under contract or otherwise, as the Owner may decide.

### 33.4. Contractor's Qualification Statement

Bidder to whom award of a Contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Bidding Documents and form of Statement of Bidder's Qualifications.

### 33.5. Contract Bonds Requirements

33.5.1. The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars (\$25,000), shall post a one hundred percent (100%) Performance Bond and one hundred percent (100%) Labor and Material Payment Bond. Bonds shall be executed on Performance Bond and Labor and Material Payment Bond forms attached hereto, with amount payable conforming to the terms of the Contract. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner.

### 33.6. Insurance Requirements

33.6.1. The Contractor shall carry insurance to protect the City of Santa Fe from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reasons of loss, injury or damage related to the Project. The Contractor shall file with the City of Santa Fe current certificates evidencing public liability insurance with limits as provided in the New Mexico Tort Claims Act, Section 41-4-19 NMSA 1978, and as that section or successors section may be amended from time to time. The contractor shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation law in effect that may be applicable to the Contractor.

All insurance required by this Agreement shall be kept and remain in full force and effect for the entire life of this Agreement.

33.6.2. The insurance coverage shall include worker's compensation, employers liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property damage, contractual liability, explosion and collapse hazard, underground Hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.

33.6.3. All insurance coverage must be maintained for the entire life of the Project. Products and completed operations coverage shall be maintained for a minimum period of one (1) year after final payment.

33.6.4. A valid certificate of insurance must be submitted to the Owner prior to issuance of a Notice-to-Proceed.

#### 34. MINIMUM WAGE RATES

34.1. Any Contract entered into in excess of sixty thousand dollars (\$60,000) for construction, alteration, demolition or repair, or any combination of these, including painting and decorating, of public buildings, public works or public roads, is subject to the minimum wage rate determination issued by the New Mexico Department of Workforce Solutions, Public Works Bureau (formerly NM Dept. of Labor, Labor & Industrial Division). Federal Funded Contracts in excess of \$2,000.00 are subject to Federal Labor Standards Requirements of Davis Bacon Act.

34.2. Contractor must comply with the City of Santa Fe Living (minimum) Wage Ordinance (Section D.2).

34.3. The bidder shall ensure that, in submitting his/her Bid, the minimum wage rate determination, included herein, has been utilized in preparing his/her Bid.

#### 35. CONTRACTOR AND SUBCONTRACTOR REGISTRATION WITH THE NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS, PUBLIC WORKS BUREAU (FORMERLY NM DEPT. OF LABOR, LABOR & INDUSTRIAL DIVISION)

35.1 Registration with the New Mexico Department of Workforce Solutions, Public Works Bureau (formerly NM Dept. of Labor, Labor & Industrial Division). A contractor or subcontractor that submits a bid valued at more than fifty thousand dollars (\$50,000) for a city project that is subject to the Public Works Minimum Wage Act (13-4-10 NMSA 1978) shall be registered with New Mexico Department of Workforce Solutions,

Public Works Bureau (formerly NM Dept. of Labor, Labor & Industrial Division). The registration number shall be provided in the bid submitted for the contractor in the space provided and for subcontractors with work proposed over \$50,000 on the subcontractor form. After the bid opening, the registration number(s) will be verified by the City and the bid will be determined to be non-responsive and disqualified if the registration number(s) appear to be not valid and the contractor does not provide proof of the required registration for itself or its subcontractors with work proposed over fifty thousand dollars (\$50,000). It is the responsibility of the contractor and the subcontractors to ensure the registration is completed prior to the bid opening.

**A.4 Bid Submittal**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

To the City of Santa Fe, State of New Mexico, Owner:

The undersigned proposes to furnish and deliver all the material and to do all the work and labor required in the construction of the LED Countdown Pedestrian Head Installation at Various Intersections Contract, City of Santa Fe, in Santa Fe County, State of New Mexico, according to the plans and specifications therefore and at the prices named and shown on the Bid Form.

The undersigned declares that the only person or parties interested in the bid submittal as principals are those named herein; that the bid submittal is made without collusion with any person, firm or corporation; that he/she has carefully examined the specifications, including special provisions, if any, and that he/she has made a personal examination of the site of the work, that he/she is to furnish all the necessary machinery, tools, apparatus and other means of construction and do all the work and furnish all the materials specified in the manner and the time prescribed; that he/she understands that the quantities are approximate only and subject to increase or decrease, and that he/she is willing to perform any increased or decreased quantities of work at unit price bid.

The undersigned hereby agrees to execute and deliver the Construction Agreement and required bonds within ten (10) days, or such further time as may be allowed in writing by the City of Santa Fe after receiving notification of the acceptance of this bid submittal, and it is hereby mutually understood and agreed that in case we do not, we forfeit the accompanying check or bid bond to the City of Santa Fe as liquidated damages, and the said City of Santa Fe may proceed to award the contract to others.

We hereby agree to commence the work within ten (10) days, or such further time as may be allowed in writing by the City of Santa Fe after notification to proceed, and to complete all the work within the time allowed by the construction agreement.

Substantial completion of the work shall mean completion and ready for acceptance of all work related to the roadway prism (including base course and paving), earthwork, drainage improvements, turnouts, permanent signing and striping and as defined in Section 101 of the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, 2014 Edition.

The undersigned proposes to furnish Labor and Material Payment Bond and Performance Bond in the amount of 100% of the Contract amount each as surety conditioned for the full complete and faithful performance of this contract, and to indemnify and save harmless the City of Santa Fe from any damage or loss of which the City of Santa Fe may become liable by the default of said Contractor, or by reason of any neglect or

carelessness on the part of said Contractor, his/her agents or employees, or by or on account of any act or omission of said Contractor, his/her servants, agents or employees, in performance of this contract.

1. The undersigned proposes to guarantee all work performed under these Plans Specifications and Contract for one year after acceptance by the City and repair and maintain same until the date of acceptance by the City of Santa Fe.
2. The undersigned tenders herewith, as a bid guaranty, for which receipt has been given, a certified check or bid bond in the amount of \_\_\_\_\_ dollars \$\_\_\_\_\_ drawn to the order of the City of Santa Fe.

\_\_\_\_\_  
Signature-Title

(Corporate Seal)

\_\_\_\_\_  
Corporate Name

\_\_\_\_\_  
Address

(Names of individual members of firms or names and titles of all officers of Corporation.)

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

Corporation organized under the laws of the State of

\_\_\_\_\_

\_\_\_\_\_  
N.M. Contractor's License No. & Type

NM Dept. of Workforce Solutions, Public Works Bureau  
Labor Enforcement Fund Registration Number:\_\_\_\_\_

[A Subcontractor NM Dept. of Workforce Solutions, Public Works Bureau Enforcement Labor Fund Registration Number, on work over \$50,000 must be listed on Subcontractor listing.]

**A.5 Bid Form**

CITY OF SANTA FE  
CONTRACTING AGENCY AND OWNER

FROM: \_\_\_\_\_

\_\_\_\_\_ hereinafter called "Bidder".

TO: City of Santa Fe  
200 Lincoln Avenue  
P.O. Box 909  
Santa Fe, New Mexico 87504

hereinafter called "CONTRACTING AGENCY",

Bid For: LED Countdown Pedestrian Head Installation at Various Intersections, CN: S100270

Bid No. '16/24/B

1. The bidders have familiarized themselves with the existing conditions on the project area affecting the cost of the work and with the contract documents which includes:
  - Advertisement for Bids
  - Instructions For Bidders
  - Bid Submittal and other required bid forms as listed herein
  - Agreement
  - Form of Performance Bond
  - Form of Labor and Material Payment Bond
  - Technical Specifications
  - Everything else included in the Project Manual and the Drawings.

Therefore, the Bidder hereby proposes to furnish all supervision, technical personnel, labor, materials, tools appurtenances, equipment, and services (including all utility and transportation services) required to construct and complete the improvements, all in accordance with the above listed documents.

Bidder agrees to perform all of the improvements described in the specifications and shown on the plans for the following unit prices:

(Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern).

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<b>Base Bid Item No.</b>	<b>Item Description</b>	<b>Units</b>	<b>Apprx. Quantity</b>
618000	<b>TRAFFIC CONTROL MANAGEMENT</b> <i>Unit Bid Price Written in WORDS:</i>	LS  <i>Unit Bid Price Written In NUMBERS:</i>	LS  <i>Total Item Bid Amount Written in NUMBERS</i>
	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>
621000	<b>MOBILIZATION</b> <i>Unit Bid Price Written in WORDS:</i>	LS  <i>Unit Bid Price Written In NUMBERS:</i>	LS  <i>Total Item Bid Amount Written in NUMBERS</i>
	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>
702810	<b>CONSTRUCTION TRAFFIC CONTROL DEVICES</b>  <i>Unit Bid Price Written in WORDS:</i>	LS  <i>Unit Bid Price Written In NUMBERS:</i>	LS  <i>Total Item Bid Amount Written in NUMBERS</i>
	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>
712202	<b>PEDESTRIAN COUNTDOWN SIGNAL (LED)</b>  <i>Unit Bid Price Written in WORDS:</i>	EACH	405  <i>Total Item Bid Amount Written in NUMBERS</i>
	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>	<i>Dollars and Cents</i>
TOTAL AMOUNT BID (Excluding NM Gross Receipts Tax)		\$	
Written in NUMBERS			<i>Dollars and Cents</i>
NEW MEXICO GROSS RECEIPTS TAX (8.1875%)		\$	
Written in NUMBERS			<i>Dollars and Cents</i>
TOTAL AMOUNT BID (Including NM Gross Receipts Tax)		\$	
Written in NUMBERS			<i>Dollars and Cents</i>

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2. Bidder has bid on all items.

3. In submitting this bid, the Bidder understands that the right is reserved by the City of Santa Fe to reject any irregular or all bids, waive any technicalities in the bids, and accept the bid deemed to be in the best interest of the public and that the City of Santa Fe intends to award one contract (if at all) for the items bid. If written notice of the acceptance of this bid is mailed, telegraphed or otherwise delivered to the undersigned within sixty (60) days after the opening thereof or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver the agreement in the prescribed form and furnish the required forms and bond(s) within ten (10) days after the agreement is presented to him/her for signature.

4. All Addenda pertaining to this project, shall be acknowledged by the Bidder in the spaces provided below:

Addendum No.	Addendum Date	Acknowledgement by Bidder or Authorized Representative	Date Acknowledged

Failure to acknowledge receipt, as provided above, may be considered sufficient grounds for disqualification of the bidder and rejection of his/her bid submittal. A record of all Addenda and copies of same will be available to all qualified bidders from the City of Santa Fe, Public Works Department, Traffic Engineering Division, 120 South Federal Place, Joseph M. Montoya Federal Building, Room 311, Santa Fe, New Mexico, Telephone 955-6631, after 3:00 p.m., two (2) days prior to the letting. It shall be the bidder's responsibility to become fully advised of all Addenda prior to submitting his/her bid.

5. The Bidder agrees to commence work under this Contract within ten (10) days after, a date to be specified in a written "Notice to Proceed" from the City of Santa Fe or its authorized agents, and fully complete the project within the time provided in the contract documents. Bidder further agrees to pay liquidated damages as provided in the Contract Documents.

6. Security in the sum of five (5) percent of the amount bid in the form of (check one):

\_\_\_\_\_ Bid Bond      \_\_\_\_\_ Certified Check

is attached hereto in accordance with the "Instructions for Bidders".

7. This Bid Submittal contains the following:

- Name of Bidder and NM Contractor License Number & types
- Bid Bond
- Non-Collusion Affidavit for Prime Bidder
- Proposal, acknowledgement of Addenda, if any
- Properly executed Bid Form
- EEO-1
- Certification of Non-segregated Facilities
- Subcontractors and Material Suppliers Listing (as applicable)

**ONE ORIGINAL AND ONE COPY OF THE BID SUBMITTAL IS REQUIRED**

Respectfully submitted:

Name of Bidder \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Official Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

New Mexico Contractor's License Number and Types: \_\_\_\_\_

United States Treasury Number: \_\_\_\_\_

New Mexico State Residence Preference Certificate Number, if any:

**A.6 Bid Bond**

A. KNOW ALL MEN BY THESE PRESENTS, THAT WE \_\_\_\_\_

\_\_\_\_\_ hereinafter called the PRINCIPAL, as Principal, and the

\_\_\_\_\_, of \_\_\_\_\_ a

Corporation duly organized under the laws of the State of \_\_\_\_\_,  
and authorized to do business in the State of New Mexico, hereinafter called the  
SURETY, as SURETY are held and firmly bound unto the City of Santa Fe, a Municipal  
Corporation, hereinafter called the OBLIGEE, in the sum of

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the payment of which sum well and truly to be made, the said  
Principal and the said Surety, bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying bid, dated  
\_\_\_\_\_, 2014, (Bid No. '16/23/B) for the construction of the LED Countdown  
Pedestrian Head Installation at Various Intersections, CN S100270, City of Santa Fe.

B. NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the  
Principal shall enter into a Contract with the Obligee in accordance with the terms of such  
bid, and give such bond or bonds as may be specified in the bidding or Contract  
Documents with good and sufficient surety for the faithful performance of such Contract  
and for the prompt payment of labor and material furnished in the prosecution thereof or  
in the event of the failure of the Principal to enter such contract and give such bond or  
bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty  
hereof between the amount specified in said bid and such larger amount for which the  
Obligee may in good faith contract with another party to perform the work covered by said  
bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

C. SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, a.d. 2014.

\_\_\_\_\_  
BIDDER

By: \_\_\_\_\_  
PRINCIPAL

(SEAL)

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
SURETY

\_\_\_\_\_  
WITNESS

Title: \_\_\_\_\_

**A.7 Certification of Bidder Regarding Equal Employment Opportunity**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or perspective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract or subcontract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

---

**CERTIFICATION OF BIDDER**

Bidder's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. Yes \_\_\_\_ No \_\_\_\_
2. Compliance reports were required to be filed in connection with such contract or subcontract. Yes \_\_\_\_ No \_\_\_\_

---

Certification - The information above is true and complete to the best of my knowledge and belief.

---

NAME AND TITLE OF SIGNER (please type)

---

SIGNATURE

---

DATE

**A.8 Certification of Non-Segregated Facilities**

(Applicable to construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause).

The construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clock, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreating or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed SUBCONTRACTORS prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he/she will retain such certifications in his/her files.

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

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**A.9 Non-Collusion Affidavit of Prime Bidder**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that:

(1) He/she is the \_\_\_\_\_ of \_\_\_\_\_ the Bidder that has submitted the attached Bid Submittal;

(2) He/she is fully informed respecting the preparation and contents of the attached Bid Submittal and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Contracting Agency or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(SIGNED) \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

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**A.10 Non-Collusion Affidavit of Subcontractor**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that:

(1) He/she is the \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the "Subcontractor";

(2) He/she is fully informed respecting the preparation and contents of the Subcontractor's bid submitted by the Subcontractor to \_\_\_\_\_, the Contractor, for certain work in connection with the \_\_\_\_\_ contract pertaining to the \_\_\_\_\_ project in \_\_\_\_\_;

(3) Such Subcontractors bid submittal is genuine and is not a collusive or sham bid submittal;

(4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Contracting Agency or any person interested in the proposed Contract; and

(5) The price or prices quoted in the Subcontractor's bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(SIGNED) \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

## **SUBCONTRACTS**

- A. The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he/she has submitted a Non-Collusion Affidavit from the subcontractor, in substantially the form shown below, and has received written approval of such subcontractor from the City of Santa Fe.
- B. No proposed subcontractor shall be disapproved by the City of Santa Fe except for cause.
- C. The Contractor shall be as fully responsible to the City of Santa Fe for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him/her.
- D. The Contractor shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the Contract for the improvements embraced.
- E. Nothing contained in the Contract shall create any contractual relation between any subcontractor and the City of Santa Fe.

### **A.11 Subcontractor and Material Suppliers Listing**

**Note:** A Contractor that Submits a bid valued at more than fifty thousand (\$50,000) for a city project, that is subject to the public works minimum wage act 13-4-10 NMSA 1978, shall be registered with the NM Dept. of Workforce Solutions, Public Works Bureau.

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

Trade:	Name of Subcontractor:	
Address:		
Telephone No.:	License No.:	NM Dept. of Workforce Solutions Regist. No.:
Signature of Subcontractor (to be obtained after award of contract):		

**A.12 Required Boiler Plate Bid Documents for Federally Funded Projects**

**BL-DBE**

**Revised 9/04**

**Page 1 of 2**

New Mexico Department of Transportation  
**NOTICE TO CONSTRUCTION CONTRACTORS**  
**BIDDERS LIST OF QUOTERS FOR THE**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

**PROJECT NUMBER:**    CN S100270

In accordance with 49 CFR Part 26, the Department will establish the State DBE goal using a Bidders List. The Bidders List will be a compilation of all quotes received by the Contractor during the advertising period. The Bidders List will be used to determine the relative availability of DBE’s.

At the time the bid is submitted to the Department, the Contractor shall list, on Form BL-DBE, the quotes received for the project, using additional sheets as necessary. The listing shall include EACH quoter’s name, business address, telephone number and whether the quoter is a New Mexico certified DBE. **FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER A BID NON-RESPONSIVE AND THE BID SHALL BE REJECTED.**

The term "quoter" shall include subcontractors and suppliers of materials with whom the Contractor has direct contact.

Providing the listing of quoters in compliance with the Provisions, shall not be a substitute for the requirements of the Subcontractors Fair Practices Act, Chapter 18, Laws of 1988, NMSA 1978, Sections 13-4-31 through 13-4-43.

**BIDDER:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
**TELEPHONE No.:** \_\_\_\_\_      **FAX No.:** \_\_\_\_\_  
**E-MAIL ADDRESS:** \_\_\_\_\_

**LISTING OF QUOTERS**

Name	Address	Telephone	DBE/ Non-DBE



SFPA-1

Page 49 of 2

## NOTICE TO CONTRACTORS

### SUBCONTRACTORS FAIR PRACTICES ACT COMPLIANCE

Revised 1-Sep-2005

This Project is subject to the Provisions of the Subcontractors Fair Practices Act, Chapter 18, Laws of 1988, NMSA 1978, Sections 13-4-31 through 13-4-43, ("the Act").

**THE LISTING THRESHOLD IS \$5,000.00.** The following categories of work on this project are subject to the provisions of the Act: **Lighting & Signalization (Items Pertaining to Sections 705 thru 716 in the Specifications where applicable).**

At the time the bid is submitted to the Department, the Contractor shall list, on SFPA-1, Page 2, one subcontractor for each category of work as specified in the preceding paragraph, that exceeds the listing threshold, using additional sheets as necessary. The listing shall include each subcontractor's name and business location. Only one subcontractor shall be listed for each category of work. FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER A BID NON-RESPONSIVE AND THE BID SHALL BE REJECTED.

If a contractor fails to list a subcontractor in excess of the listing threshold and the contractor does not state that no bid was received or that only one bid was received, the contractor represents that it is fully qualified to perform that portion of the work itself and that it shall perform that portion of the work itself.

Providing the listing of subcontractors in compliance with the Act shall not be a substitute for the requirements of the Special Provisions regarding Disadvantaged Business Enterprise participation.

The apparent low bidder shall not allow a subcontract that exceeds the listing threshold amount to be voluntarily assigned or transferred or to be performed by anyone other than the original subcontractor listed in the original bid without the prior written approval of the Department.

No Contractor whose bid is accepted shall subcontract any portion of the work in any amount exceeding the listing threshold amount where the original bid did not designate a subcontractor, unless:

- The Contractor received no bid or received only one bid for the category of work and had indicated such on SFPA-1, Page 2.
- The work is pursuant to a change order that causes changes or deviations from the original Contract.

All approvals, consents or determinations made by the Department to a substitution of a subcontractor pursuant to the Act shall be made only to the extent that such approvals, consents or determinations are consistent with the Disadvantaged Business Enterprise provisions of the Special Provisions set forth in the contract documents between the Department and the Contractor.

In the event a hearing is required pursuant to the provisions of the Act and a delay in the work is caused as a result of a subcontractor protesting its substitution, the Contractor shall NOT be entitled to an increase in the Contract Price or Contract Time.

**CN S100270**

**SUBCONTRACTOR(S) PERFORMING LIGHTING/SIGNALIZATION WORK**

NAME OF SUBCONTRACTOR AND LOCATION OF PLACE OF BUSINESS

**Contractor:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

New Mexico  
State Highway and Transportation Department

NON-DEBARMENT CERTIFICATION

**I. Instructions For Certification**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transactions," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

sections of the rules implementing Executive Order 12540. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary 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.
7. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. (505) 827-5570).
9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 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.

II. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

\_\_\_\_\_ being first  
(President or duly authorized Company official  
duly sworn deposes and says that he is \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_  
(official capacity)

\_\_\_\_\_ with the intention of becoming  
(name of Company)  
a primary participant on New Mexico Highway Construction

Project \_\_\_\_\_  
(Project Number)

and that he certifies to the best of his knowledge and belief that said company and its principals:

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

- (c) 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 (b) of this certification; and
- (d) 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.

Further affiant sayeth not.

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

\_\_\_\_\_  
(Print Name)

SUBSCRIBED AND SWORN to before me a notary public this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**NOTICE TO CONTRACTORS****March 14, 1990****CERTIFICATION FOR FEDERAL-AID CONTRACT**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the 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.

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

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

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

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB  
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> <li>a. contract</li> <li>b. grant</li> <li>c. cooperative agreement</li> <li>d. loan                         <ul style="list-style-type: none"> <li>e. loan guarantee</li> <li>f. loan insurance</li> </ul> </li> </ul>	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> <li>a. bid/offer/application</li> <li>b. Initial award</li> <li>c. post-award</li> </ul>	<p>3. Report Type:</p> <ul style="list-style-type: none"> <li>a. initial filing</li> <li>b. material change For Material Change Only:</li> </ul> <p style="text-align: right;">year _____ quarter _____</p> <p style="text-align: right;">_____ date of last report _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime</p> <p>Congressional District, if known: _____</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------

<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description</p> <p>CFDA Number, if applicable: _____</p>
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<p>8. Federal Action Number, if known: _____</p>	<p>9. Award Amount, if known: \$ _____</p>
--------------------------------------------------	--------------------------------------------

<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p style="text-align: right;">(attach Continuation Sheet(s))</p>	<p>b. Individual Performing Services (including address if different from No. 10a) (last name, first name, MI)</p> <p>SF-LLL-A, if necessary)</p>
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<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. retainer</li> <li><input type="checkbox"/> b. one-time fee</li> <li><input type="checkbox"/> c. commission</li> <li><input type="checkbox"/> d. contingent fee</li> <li><input type="checkbox"/> e. deferred</li> <li><input type="checkbox"/> f. other; specify: _____</li> </ul>
<p>12. Form of Payment (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. cash</li> <li><input type="checkbox"/> b. in-kind; specify: nature _____ value _____</li> </ul>	

<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for payment indicated in Item 11:</p> <p style="text-align: center;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>15. Continuation Sheet(s) SF-LLL-A attached:</p>	<p>Yes                      No</p>	
-----------------------------------------------------	------------------------------------	--

<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------

Authorized for Local Reproduction  
Standard Form--LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee of prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. ~~Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient.~~ Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a); Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local Reproduction  
Standard Form-LLL-A

## **New Mexico Pay Equity Reporting Acknowledgement Executive Order 2009-049**

**Contractor:** \_\_\_\_\_  
**Control No.:** «cn»

Note: The Executive Order and required forms can be obtained from the following link:  
[http://www.generalservices.state.nm.us/spd/pay\\_e.html](http://www.generalservices.state.nm.us/spd/pay_e.html)

Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.

By signing this form Contractor acknowledges that it will comply with these requirements.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **B. *Contract Documents***

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**B.1 Construction Agreement**

REQUEST FOR BID FORM

CITY OF SANTA FE  
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN  
OWNER AND CONTRACTOR

LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF SANTA FE, herein known as the Owner, and ( \_\_\_\_\_ ), herein known as the Contractor.

For the following:

PROJECT:	LED Countdown Pedestrian Head Installation at Various Intersections
PROJECT NO.:	CN S100270
ENGINEER OF RECORD: (OR ARCHITECT)	City of Santa Fe Traffic Engineering Division PO Box 909, Santa Fe, NM 87504-0909 (OR AS APPLICABLE TO THE TASK ASSIGNMENT)

DISTRIBUTION:

OWNER	_____
CONTRACTOR	_____
ENGINEER (OR ARCHITECT)	_____
USER DIVISION	_____
OTHER	_____

## RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for on call roadway lighting and infrastructure maintenance services; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, this Contract was approved by the Governing Body of the City of Santa Fe at its meeting of \_\_\_\_\_, 2014.

The OWNER and the CONTRACTOR agree:

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

### ARTICLE 2 THE WORK

The Contractor shall perform all the work required by the Contract Documents for on call construction services. (Bid Number "16/23/B).

The work designated as on call construction services, consists of, but is not limited to: maintenance of roadway lighting infrastructure tasks or work orders, as described in the Contract Documents, and alternates as accepted by the Owner.

Contractor shall be responsible for verifications of all conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all soils testing and any other testing required for the project.

Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

### ARTICLE 3 TIME OF COMMENCEMENT AND COMPLETION

The work to be performed under this Contract shall be assigned by the City on a task by task basis. Task commencement shall be as specified in the written Notice to Proceed. Task completion, whether Substantial and/or Physical completion as set forth in each written Notice to Proceed, shall be achieved no later than the date specified in the written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

ARTICLE 4  
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to assigned tasks or work orders, and additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum not to exceed \_\_\_\_\_ Dollars (\$\*\*\*, \*\*\*), excluding New Mexico Gross Receipt Taxes.

The Base Bid is summarized as follows:

Base Bid	\$ _____
Gross Receipts Tax (8.3125%)	\$ _____
TOTAL BASE BID AMOUNT (tax included)	\$ _____

ARTICLE 5  
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon physical completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6  
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to achieve Substantial and/or Physical Completion by the contract date set forth in each written Notice to Proceed pursuant Article 3 herein or any extension in the Contract thereof, the Contractor agrees to pay the Owner the amounts pursuant Section 108.8 of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction (2014 Edition), not as a penalty, but as liquidated damages for breach of the Contract.

ARTICLE 7  
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected,

and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

## ARTICLE 8 SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit two (2) copies of a progress schedule covering project operations for the task period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and made part of the Contract.

## ARTICLE 9 GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner. If the Contractor is permitted to subcontract, the Contractor agrees to comply with the provisions of the

Subcontractors Fair Practices Act, Section 13-4-31 through 13-4-43 NMSA 1978. Further, if permitted to subcontract, the Contractor shall comply with all provisions of the Prompt Payment Act, Sections 57-28-1 through 57-28-11 NMSA 1978.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER

City of Santa Fe, Public Works Department  
Traffic Engineering Division  
P.O. Box 909  
Santa Fe, New Mexico 87504-0909

CONTRACTOR

\_\_\_\_\_  
( Contractor's address)  
\_\_\_\_\_, NM ( zip code)

New Mexico License # \_\_\_\_\_

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

9.21 Entire Agreement. This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER:  
CITY OF SANTA FE

\_\_\_\_\_  
JAVIER M. GONZALES; MAYOR

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

MDM 10/22/15  
\_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
OSCAR RODRIGUEZ, FINANCE DIRECTOR

Business Unit/Line Item \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_  
(name of contractor company)

By \_\_\_\_\_  
( name of signer), (title of signer)

Date: \_\_\_\_\_

Business Unit/Line Item \_\_\_\_\_

CONTRACTOR:  
( name of contractor company )

By: \_\_\_\_\_  
( name of signer), (title of signer)

Date: \_\_\_\_\_

NM Taxation & Revenue CRS No. \_\_\_\_\_  
City of Santa Fe Business Reg. No. \_\_\_\_\_

**B.2 Performance Bond**

A. KNOW ALL MEN BY THESE PRESENTS, that

\_\_\_\_\_  
*(here insert the name and address or legal title of the Contractor)*  
as Principal, hereinafter called Contractor, and

\_\_\_\_\_  
*(here insert the legal title of Surety)*

as Surety, hereinafter called Surety, are held firmly bound unto the City of Santa Fe, a New Mexico municipal corporation as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

B. WHEREAS, the Contractor has by written agreement dated \_\_\_\_\_, 2014 entered into a contract with the City of Santa Fe for the LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270, RFB# '16/23/B in accordance with drawings and specifications prepared by the City of Santa Fe which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The Surety hereby waives notice of any alteration or extension of time made by the City.
2. Whenever Contractor shall be, and declared by the City to be in default under the contract, the City having performed City's obligations thereunder, the surety may promptly remedy the default or shall promptly:
  - a. Complete the contract in accordance with its terms and conditions or;
  - b. Obtain a bid or bids for submission to City for completing the contract in accordance with its terms and conditions, and upon determination by City and Surety of the lowest responsible bidder, arrange for a contract between such bidder and City, and make available as work progresses

(even though there should be a default or a secession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by City to Contractor under the contract and any amendments thereto, less the amount properly paid by City to Contractor.

3. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators or successors of the City.

SIGNED AND SEALED ON \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Contractor – Principal

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title: \_\_\_\_\_

Countersigned: \_\_\_\_\_

\_\_\_\_\_  
Surety's Authorized New Mexico Agent



**B.3 Labor and Material Payment Bond**

A. KNOW ALL MEN BY THESE PRESENTS, that

\_\_\_\_\_  
*(here insert the name and address or legal title of the Contractor)*

as Principal, hereinafter called Principal, and

\_\_\_\_\_  
*(here insert the legal title of Surety)*

as Surety, hereinafter called Surety, are held firmly bound unto the City of Santa Fe, a New Mexico municipal corporation as Obligee, hereinafter called City, for the use and benefit of claimants as herein below defined, in the amount of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

B. WHEREAS, Principal has by written agreement dated \_\_\_\_\_, 2011, entered into a contract with the City of Santa Fe for the LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270, RFB# '16/23/B, in accordance with drawings and specifications prepared by the City of Santa Fe which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the contract, than this obligation shall be void; otherwise, it shall remain in full force, subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the principal or with a subcontractor of the principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract.
2. The above named Principal and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The City shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, or other than one having a direct contract with the principal, shall have written notice to any two of the following: the Principal, the City, or the surety above named, within ninety (90) days after such said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.

b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, City or surety at any place where an office is regularly maintained for the transaction of business, or revised in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such services need not be made by a public officer.

c. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

d. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall not be reduced by and to the extent of any payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED ON \_\_\_\_\_, 2014

In presence of:

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

Title: \_\_\_\_\_

Countersigned:

---

Surety's Authorized New Mexico Agent

This bond is issued simultaneously with performance bond in favor of contracting agency for the faithful performance of the contract.

**B.4 Required Boiler Plate Contract Documents for Federally Funded Projects**

## On The Job Training Page 2

contractor's records shall document the findings in each case. Such records shall be available for inspection by authorized representatives of NMDOT and the Federal Highway Administration (FHWA).

The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the approved training program being utilized. When a specific ratio is not provided, the ratio of apprentices and trainees to journeymen expected to be on the contractor's work force during normal operations shall, pursuant to 23 CFR 230.111(c)(10), fall between 1:10 and 1:4.

### C. Annual Training Goal

The NMDOT Office of Equal Opportunity Programs will notify contractors assigned an annual training goal prior to the beginning of the calendar year (January 1 to December 31) within which they must participate. Contractors are assigned an annual training goal based on the dollar amount awarded to the contractor as an NMDOT federal-aid prime contractor during the previous state fiscal year (July 1 through June 30). More specifically, each contractor cumulatively awarded ten million dollars or more as a prime contractor on NMDOT federal-aid projects during the previous state fiscal year is assigned and shall commit to train, certify and advance one trainee to journeyman worker status during and before the expiration of the calendar year. The trainee must begin training during the calendar year within which the contractor must participate and trainee time cannot "roll-over" from one calendar year to another for purposes of meeting the annual goal.

While NMDOT strongly encourages contractors to independently provide on the job training on their projects, only those contractors who have reached the above-mentioned threshold are required to participate in and are bound by the provisions of this OJT Program. When a contractor is not assigned an annual training goal but still utilizes trainees/apprentices on a federal-aid project, the contractor will not be reimbursed for training hours under the OJT pay item, but the contractor may pay the trainees/apprentices the wages allowed in the approved training program, which may be less than the minimum pay rate for the classification. The contractor is still required to use an approved training program, register its trainees in the program, pay trainees according to the program, and show trainees on its payrolls as required by FHWA-1273, Sections IV and V.

## II. PROGRAM REQUIREMENTS

### A. Use of Approved Training Program

NMDOT recognizes four types of contractor based training programs. Those programs are: contractor in-house training programs that have received prior approval from both FHWA and NMDOT; training programs approved in other states subject to proof of approval; the approved Workforce Development Program provided through the Associated Contractors of New Mexico (ACNM); and the New Mexico Department of Workforce Solutions' State Apprenticeship Council programs (e.g. union apprenticeships, if the contract employees are otherwise eligible). If a contractor wants to use a training program other than one of the four mentioned above, the contractor must have the program approved by NMDOT and FHWA prior to commencing work. All training programs must be administered in a manner consistent

## On The Job Training Page 3

with the equal employment obligations of federal-aid highway construction contracts. NMDOT reserves the right to request documentation that a program fulfills these obligations. Contractors must ensure that each trainee does not exceed the maximum number of training hours required for the completion of the selected training program.

### B. Wage Requirements

Contractors must pay each approved trainee at the appropriate percentage of journeyman's wage rate based on the approved training program and consistent with applicable State and Federal regulations and guidance.

### C. Reporting Requirements

Contractors must submit the following documents to the administrator of the approved training program being utilized, the NMDOT Office of Equal Opportunity Programs, and, for NMDOT federal-aid projects, to the Project Manager:

1. Contractors shall complete and submit Form A-2201, Contractor OJT Enrollment Form, within seven business days of the contractor's intent to assign a trainee(s) to a project.
2. For NMDOT federal-aid projects, Contractors shall complete and submit form A-2203, OJT Program Labor Classification Request within seven business days of the contractor's intent to assign a trainee(s) to a project.
3. Contractors shall complete and submit Form A-2202, OJT Program Monthly Reporting Form, on or before the 10<sup>th</sup> of each month, reporting on the preceding month.

Contractors shall submit to the NMDOT Office of Equal Opportunity Programs an Annual Summary Report by January 20<sup>th</sup> of the following calendar year. The report must give an accurate account of all trainee hours; identifying each trainee by name, ethnicity and gender and identifying each project and/or contract and the trainee hours attributed thereto.

Contractors should also note that:

- a. Monthly reports submitted after January 10<sup>th</sup> of the following year will not be accepted or considered towards goal attainment for the previous calendar year.
- b. If a contractor did not attain its annual goal, it must submit, with its Annual Summary Report, documentation of its Good Faith Efforts to attain the goal (see Section III below).

## On The Job Training Page 4

Contactors should only submit paperwork for individuals accepted and enrolled in an approved training program as outlined in Section II A, and not for individuals participating in other training and/or apprenticeship programs.

### D. Contractor Participation

The contractor's Equal Employment Opportunity Officer (EEO Officer) shall be responsible for monitoring and administering the trainees' progress. The EEO Officer shall serve as the point of contact for NMDOT representatives regarding information, documentation, and conflict resolution. The contractor shall furnish each trainee a copy of the Training Program and other documentation related to the training program. The contractor shall further make every reasonable effort to provide training that develops skills as required by the training program. The contractor shall furnish to each trainee, upon successful completion of their training program, a certificate showing the type and length of training satisfactorily completed.

### E. Contractor Reimbursement

Except as otherwise noted below, NMDOT will reimburse the contractor 80 cents per hour of training given an employee on a State or Federal-aid project in accordance with an approved training program. Reimbursements will be made upon submission to and approval by the Project Manager of a request for change order with the properly completed OJT monthly reporting forms attached. Reimbursement will not be made for a trainee's hours that exceed the maximum number of training hours required for the completion of the selected classification in the training program.

### III. Good Faith Efforts

If a contractor does not or can not achieve its annual training goal with female or minority trainees, it must produce adequate Good Faith Efforts documentation. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, aggressive, and continuous result-oriented measures. (23 CFR 230.409(g)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise. Whenever a contractor requests NMDOT approval of someone other than a minority or a female for credit towards its annual training goal, the contractor must submit documented evidence of its Good Faith Efforts to fill that position with a minority or female.

NMDOT will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis, and take into account the following:

- Availability of minorities and females for training;
- The potential for effective training;
- Duration of the contract;
- Dollar value of the contract;

## On The Job Training

### Page 5

- Total normal work force that the average bidder could be expected to use
- Geographic location;
- Type of work;
- The need for journey level individuals in the area.

Good Faith Efforts may include, but are not limited to, documentation of efforts to:

- Contact minority and female employees to gain referrals on other minority and female applicants;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain evaluations that monitor efforts made to achieve diversity on federal-aid projects and the contractor's workforce in general (i.e. significant numbers of minorities and females employed on a company wide basis);

NMDOT may reject utilization of non-minority male trainees for credit toward meeting the annual goal if it determines that the contractor failed to make sufficient Good Faith Efforts to hire minorities or female trainees and/or the contractor failed to document or submit evidence of its Good Faith Effort to do so.

## IV. NMDOT PROGRAM MONITORING

### A. Site Visits

NMDOT may conduct periodic site visits to a contractor's worksite to review OJT Program compliance along with other contract compliance issues related to the project. NMDOT will make every effort to ensure minimal disruption to a contractor's work.

### B. End of Year Audits and Sanctions for Non-Compliance

NMDOT will perform an end of year audit of each contractor to verify attainment of the annual OJT goal. If a contractor, through its Annual Summary Report, can demonstrate that it attained its annual OJT Program goal or made adequate Good Faith Efforts to do so, then NMDOT will determine that the contractor is in compliance with the OJT Program requirements.

If a contractor has neither attained its goal nor submitted adequate Good Faith Efforts documentation, NMDOT will issue a Show Cause Notice outlining its findings of non-compliance and providing its determination of sanctions attributed thereto. Within thirty (30) days of receiving the Show Cause Notice, the contractor may submit a written response to the Show Cause Notice providing argument and evidence in opposition to the NMDOT findings of non-compliance and/or its determination of sanctions

**On The Job Training**  
**Page 6**

If a contractor fails to submit a written response to the Show Cause Notice within the specified period or the written response to the Show Cause Notice does not cause NMDOT to change its findings of non-compliance and/or its determination of sanctions, NMDOT will issue its Final Order to the contractor regarding the non-compliance and assessing sanctions.

Sanctions for non-compliance may include, but are not limited to: liquidated damages, suspension of any payment in whole or in part, termination or cancellation of contracts in whole or in part, and/or suspension or debarment of the contractor.

FOR MORE INFORMATION CALL OR WRITE:

New Mexico Department of Transportation  
Office of Equal Opportunity Programs  
1570 Pacheco Street, Suite A10  
Santa Fe, New Mexico 87505  
1-800-544-0936

## **SELECTED DBE (DBE) PROGRAM PROVISIONS DISADVANTAGED BUSINESS PARTICIPATION IN USDOT ASSISTED CONTRACTS**

**June 11, 2009**

### **Objective:**

The purpose of the DBE Program is to implement the provisions of 49 CFR Part 26, other pertinent regulations, and source legislation. The objectives are: (a) To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the USDOT's highway, transit, and airport financial assistance programs; (b) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts; (c) To ensure that USDOT's DBE program is narrowly tailored in accordance with applicable law; (d) To ensure that only firms that fully meet the eligibility standards specified in 49 CFR Part 26 are permitted to participate as DBEs; (e) To help remove barriers to the participation of DBEs in USDOT-assisted contracts; (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs; and (h) to comply with the New Mexico Procurement Code §13-1-28 through §13-1-199, NMSA 1978, as amended, and any applicable regulations thereto.

The New Mexico Department of Transportation (NMDOT) will strive to meet the annual State Goal for DBE participation in federal-aid construction and consultant design programs and activities in New Mexico. The long-range objective of the Department will be to establish a level playing field for DBE contractors to compete for federally assisted highway construction projects as prime contractors, subcontractors, design consultants, and other consultants. It is the intent of the NMDOT to provide opportunities to DBE firms so they can in time graduate from the DBE Program and perform as prime contractors and subcontractors without DBE Program assistance.

### **Statutory Authority:**

The following is a brief history of the Regulations, which implement the DBE Program.

USDOT Regulations (49 CFR Part 23 and 26) published in the Federal Register, Volume 45, No.63 dated March 31, 1980 established a requirement that all recipients of Federal-Aid highway program funds establish a Minority Business Enterprise (MBE) Program. The regulations were applicable both to Federal-Aid construction and to its non-construction activities. USDOT published further regulations in the Federal Register, Volume 48, No. 141 on July 21, 1983. This regulation implemented Section 105(f) of the Surface Transportation Assistance Act (STAA) of 1982, which provided that not less than a fixed percentage of the amounts authorized to be appropriated under the Act should be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals. USDOT published regulations in the Federal Register, Volume 52, No. 203 on October 21, 1987 implementing Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987.

As a result of the decision by the United States Supreme Court in Adarand Constructors Inc. v. Peña, 513 U.S. 1108, 115 S.Ct. 896, 103 L.Ed.2d 781 (1995), and its progeny in federal district courts across the country, USDOT promulgated new regulations to meet the strict scrutiny test

for affirmative action programs announced in Adarand. These new regulations, 49 CFR Part 26, which were published in the Federal Register, February 2, 1999, 64 Fed. Reg. 5095 repeal the former regulations found at 49 CFR Part 23. These regulations are effective March 4, 1999, and require each primary recipient of specified federal-aid, including NMDOT, to develop and implement a DBE Program consistent with Part 26 by September, 1999, as a condition to receiving federal-aid funding. The regulations observe a national aspirational goal of 10% DBE participation in federal-aid public works construction; require primary recipients to establish yearly overall goals based on local availability of DBEs ready, willing and able to participate in public works construction; require primary recipients to use race-neutral means to achieve annual DBE participation goals, and mandate size limits on certified DBEs.

USDOT's legal authority for 49 CFR Part 23 (as amended) and Part 26, includes sundry Executive Orders, 23 U.S.C. 324, 42 U.S.C. 2000d et seq., and 49 U.S.C. 1615, 47107, 47113, and 47123.

### **Policy Statement:**

It is the policy of the New Mexico Department of Transportation on, acting through the NMDOT's OEOP, to encourage and support the DBE Program and its objectives to the maximum extent possible. This rule will be circulated throughout the NMDOT, Construction Organizations, DBE and non-DBE business communities that perform work with the NMDOT and other interested parties.

The NMDOT and all recipients of USDOT-assisted contracts will not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The NMDOT and all recipients will further ensure that the NMDOT and/or all recipients of USDOT-assisted contracts will not discriminate in the development, implementation and administration of the DBE Program. Implementation of the DBE Program by the NMDOT is a legal obligation and failure to carry out its terms will be treated as a violation whereby sanctions may be imposed as provided for under 49 CFR Part 26. The DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the NMDOT in its financial assistance agreements with USDOT.

No person will be excluded from participation in or denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this DBE Program or 49 CFR Part 26 on the basis of race, color, sex or national origin.

In administering the DBE Program, the NMDOT will not use criteria or methods that would have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

From time to time NMDOT will receive interpretations from USDOT, which will be binding on NMDOT, sub-recipients, and contractors.

**Definitions:**

**AFFILIATION** - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when either directly or indirectly one concern controls or has the power to control the other; or a third party or parties controls or has the power to control both; or an identity of interest between or among parties exists that affiliation may be found.

In determining whether affiliations exist, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and statutory cap on the participation of firms in the DBE program.

**ALASKA NATIVE** - a citizen of the United States who is a person of one fourth (1/4) degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**ALASKA NATIVE CORPORATION (ANC)** - any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

**COMMERCIALY USEFUL FUNCTION (CUF)** - means that a DBE is responsible for execution of a distinct element of the work of a contract or subcontract and carries out its responsibilities by actually performing, managing and supervising the work involved, or provides professional services.

**COMPLIANCE** - means that a recipient has correctly implemented the requirements of this part.

**CONTRACT** - means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

**CONTRACT GOAL** - means the percentage of DBE participation established by NMDOT, if required, for a USDOT-Assisted Contract.

**CONTRACTOR** - means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport program.

**DEPARTMENT** - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**DESIGN AND BUILD PROJECT DELIVERY SYSTEM** - means a procurement process by which a using agency contracts with one firm who has responsibility for the design, construction and delivery of a project under a single contract with the using agency.

**DESIGN CONSULTANT (OR OTHER CONSULTANTS)** - means an individual, firm or

partnership that contracts with the NMDOT to provide services for engineering, surveying, environmental, hazardous materials, subsurface utility engineering, and other services which require a rigorous, logical, science based approach for data acquisition to be used in the development of NMDOT highway construction plans. Other consultants include providers of any other professional services funded with FHWA monies and FTA and FAA grant recipients receiving \$250,000 or more in aggregate.

**DISADVANTAGED BUSINESS ENTERPRISE OR DBE** - means a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**GOOD FAITH EFFORTS (GFE)** - means efforts to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

**IMMEDIATE FAMILY MEMBER** - means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law.

**INDIAN TRIBE** - means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or are recognized as such by the state in which the tribe, band, nation, group, or community resides.

**JOINT VENTURE** - means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**LOSP - Liaison Outreach and Services Program** - means a contractor who enters into Cooperative Agreements with chambers of commerce and trade associations to provide liaison services between the USDOT, its grantees, recipients, contractors, subcontractors and minority-owned and disadvantaged business enterprises.

**NAICS - North American Industrial Classification System** - replaces the Standard Industrial Classification Code (SIC) designation which best describes the primary business of a firm.

**NATIVE HAWAIIAN** - means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii.

**NATIVE HAWAIIAN ORGANIZATION** - means any community service organization serving Native Hawaiians in the state of Hawaii which is a not-for-profit organization chartered by the state of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**NMDOT** - means New Mexico Department of Transportation .

**NONCOMPLIANCE** - means that a recipient has not correctly implemented the requirements of 49 CFR Part 26.

**OEOP** - means Office of Equal Opportunity Programs.

**OPERATING ADMINISTRATION (OA)** - means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), The Federal Transit Administration (FTA). The "Administrator" of any OA includes his or her designees.

**OVER-CONCENTRATION** - means a condition in which DBE firms are being utilized in certain types of work to the extent that non-DBEs are unduly burdened from participating in this same type of work.

**PERSONAL NET WORTH** - means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**PRIMARY INDUSTRY CLASSIFICATION** - means the six digit NAICS designation which best describes the primary business of a firm. The NAICS code designations are described in the North American Industry Classification Manual.

**PRIMARY RECIPIENT** - means a recipient to which USDOT financial assistance is given and passes some or all of it on to another recipient

**PRINCIPAL PLACE OF BUSINESS** - means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**PROCUREMENT CODE** - means §13-1-28 through §13-1-199, NMSA 1978, as amended and any applicable regulations thereto.

**PROCUREMENT CODE REGULATIONS** - means 1 NMAC 5.2, as amended.

**PROFESSIONAL SERVICES** - means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

**PROGRAM** - means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.

**PROPOSAL** - means an offer compiled and developed by an offeror in response to a Request for Proposal.

**RACE-CONSCIOUS MEASURE** - means a program that is focused specifically on assisting

only DBEs, including women-owned DBEs.

**RACE-NEUTRAL MEASURE** - means a program that is, or can be, used to assist all small businesses. For purposes of this part, race-neutral includes gender-neutrality.

**READY, WILLING AND ABLE** - means, for the purpose of setting annual DBE goals, in the context of a DBE or non-DBE business, that it has the necessary license to perform work on USDOT-assisted contracts in its home state, is not currently suspended or debarred, and has demonstrated its interest in performing work on USDOT-assisted contracts by submitting a bid, proposal, or quotation as a prospective prime contractor, subcontractor, supplier, trucker, consultant, or other relevant business entity, on a New Mexico USDOT-assisted contract within the current or two (2) previous federal fiscal years, or such shorter duration as established by the NMDOT.

**RECIPIENT** - means any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or FTA or who has applied for such assistance.

**REGULAR DEALER** - means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealer's own distribution equipment will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealers.

**REQUEST FOR PROPOSALS (RFP)** - means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**RESPONSIBLE BIDDER** - means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

**RESPONSIBLE OFFEROR** - means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

**RESPONSIVE BID** - means a bid which conforms in all material respects to the requirements set forth in the invitation forbids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements

**RESPONSIVE OFFER** - means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price quality, quantity, or delivery requirements.

**SECRETARY** - means the Secretary of the U.S. Department of Transportation or designee.

**SERVICES** - means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

**SET-ASIDE** - means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**SMALL BUSINESS ADMINISTRATION (SBA)** - means the United States Small Business Administration.

**SMALL BUSINESS CONCERN** - means with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration Regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

**SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL** - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

An individual whom the NMDOT finds to be a socially and economically disadvantaged individual on a case-by-case basis.

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged;

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;

- (f) Women; and
- (g) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**SOFTWARE**-The entire set of programs, procedures, and related documentation associated with a computer programs used for the purpose of reporting Contract/Labor compliance and diversity (DBE related data) information as designated by the Office of Equal Opportunity Programs (OEOP).

**STATE GOAL** - means the percentage of DBE participation in New Mexico USDOT Assisted contracts that the NMDOT expects absent the effects of discrimination. The NMDOT sets the state goal annually

**TRIBALLY OWNED CONCERN** - means any concern at least 51 percent owned by an Indian tribe as defined in this section.

**UNIFIED CERTIFICATION PROGRAM (UCP)** - means an entity that provides a one-stop shopping service to applicants seeking DBE certification. The entity must comply with all provisions of this rule concerning certification and nondiscrimination.

**USDOT** - means U.S. Department of Transportation.

**USDOT-ASSISTED CONTRACT** - means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

### **Pre-Bid:**

Pre-bid services and Requests for Proposals, to inform the certified Disadvantaged Business Enterprises of contract opportunities will include, but not be limited to, the following:

All certified DBE's will be placed on the NMDOT's regular and/or electronic mailing list to receive Invitations for Bid, Plan Holders List, Requests or Proposals and other NMDOT procurement mailings.

Plans, Specifications, and Invitations for Bid will be available for inspection by certified DBE firms at the OEOP and the PSE Bureau of the NMDOT.

Requests for Proposals (RFP's) will be available for inspection by certified DBE firms at the OEOP and the Contracts Unit of the NMDOT.

### **Award of Contract Procedures:**

The NMDOT Award of Contract Procedures will include, but not be limited to, the following:

The NMDOT will include appropriate DBE contract provisions, or summaries thereof, in the Plans, Specifications, Invitations for Bids, and Requests for Proposals and Contract Proposals for all Federal-Aid contracts. Selected DBE - Program Provisions - DBE Participation in USDOT-Assisted Contracts will be included in appropriate contracts.

For all projects using race-neutral measures, the following DBE forms, as appropriate, are required to be submitted for award of contract:

- (a) The Participating Contractor's and Consultant's Annual Profile Registration Form A-1012 is to be submitted to the OEOP annually
- (b) The Notice to Construction Contractors Bidder's List of Quoters for the DBE Program BL-DBE is to be submitted by all construction bidders with the contract bid at the time of the bid letting
- (c) The Design and Other Consultant Offeror's List- Form A-1013- is to be submitted by all consultants at the time of the proposal submittal
- (d) A fully executed Certification of Consultant or Offeror for DBE Annual State Goal Form A-1014 is to be submitted at the time a proposal is submitted

In the event projects use race-conscious measures, the following DBE forms, as appropriate, are required to be submitted for award of contract:

- (a) The Participating Contractor's and Consultant's Annual Profile Registration-Form A-1012- is to be submitted to the OEOP annually.
- (b) The Notice to Construction Contractors Bidder's List of Quoters for the DBE Program BL-DBE- is to be submitted by all construction bidders with contract bid at the time of the bid letting.
- (c) The Design and Other Consultant Offeror's List Form A-1013 is to be submitted at the time the proposal is submittal.
- (d) A fully executed Certification of Consultant or Offeror for DBE Annual State Goal Form A-1014 is to be submitted at the time a proposal is submitted.
- (e) For construction projects, the apparent low bidder will complete and sign Form A-585A-DBE A-1 at the time of the Bid Opening. All listed DBE firm(s) must be certified by the NMDOT prior to submission of Form A-585DBE A-1.
  - (1) The construction contract will be awarded to the lowest qualified and responsible bidder who gives written assurance to meet the established DBE contract goal or who can satisfactorily demonstrate good faith efforts why it cannot do so. Failure to meet the goal or demonstrate good faith efforts will render the bid non-responsive.
- (f) For design or other consultant proposals, all responsible offerors will complete and sign Form A-585B-DBE A-2 (Appendix L) and include it with other required documents of the offeror's "Proposal Package" upon successful negotiations for consulting services. All offeror's written assurance will be considered binding.
  - (1) The design or other consultant contract will be awarded to the best qualified and responsible offeror who gives this written assurance to meet the established DBE contract goal or who can satisfactorily demonstrate good faith efforts why it cannot do so. Failure to meet the goal or demonstrate good faith efforts will

render the consultants proposal non-responsive.

- (2) The design consultant and other consultants will be selected in accordance with the requirements of NMSA 1978, § 13-1-115 and NMSA 13-1-120.
- (g) The information required by Form A-585 DBE A-1 and form A-585B DBE A-2 must be complete and accurate in every detail and in final form at the time it is submitted to the NMDOT for approval. This form will be evaluated prior to the award of the contract. Failure to submit either document in proper form and accuracy will render the bid or proposal non-responsive. All bidders or offerors are required to list on Form A-585 DBE A-1 or Form A-585B-DBE A-2, the following information:
  - (1) The names of DBE subcontractors/subconsultants and suppliers that will participate in the contract;
  - (2) A description of the work that each DBE will perform;
  - (3) The dollar amount of the participation of each DBE firm listed; and
  - (4) Written documentation of the bidder's or offeror's commitment to use a DBE subcontractor/subconsultant/supplier whose participation it submits to meet the DBE contract goal;
  - (5) If the contract goal is not met, evidence of good faith efforts must be documented and submitted with appropriate Form A-585- DBE A-1 or Form A-585B A-2.

#### **Good Faith Efforts (GFEs):**

Good Faith Efforts. When race conscious measures are used and a project goal is established NMDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the contractor or bidder or offeror has made. The efforts employed by the contractor or bidder or offeror should be those that one could reasonably expect a contractor or a bidder or offeror to make if they were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. On the other hand, NMDOT will count bona fide good faith effort making a determination to award a contract.

The following is a list of types of actions, which the NMDOT will consider as part of the bidder's or offeror's good faith efforts to obtain DBE participation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. This demonstration should include, but not be limited to, the following:

- (a) Soliciting through all reasonable and available means (e.g. attendance at pre-bid, pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder or offeror must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder or offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor or prime consultant might otherwise prefer to perform these work items with its own forces.
- (c) Providing interested DBEs with adequate information about the construction plans, construction specifications, design scope of work and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (d) Negotiating in good faith with interested DBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to DBE subcontractors, subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors, subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the construction plans and specifications for the work selected for subcontracting or requirements and design scope of work of the RFP and subconsulting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder or offeror using good business judgment would consider a number of factors in negotiating with subcontractors including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's or offeror's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of the prime contractor or consultant to perform the work of a contract with its own organization does not relieve the bidder or offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Excessive or unreasonable will be deemed 10% or more than any bid received for that item of work by a non DBE. Prime consultants will evaluate subconsultants on quality of submittal of subconsultant services. Prime consultants are not required to accept subconsultants offers of lower quality with respect to other subconsultants offers.
- (e) Prime contractors and consultants will not reject DBEs as being unqualified without sound reasons which will be based on a thorough investigation of their capabilities. The contractor's or consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's or design consultant's efforts to meet the project goal.
- (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient, contractor or consultant.
- (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (h) Effectively using the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business

assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder or offeror has made good faith efforts, the NMDOT may take into account the performance of other bidders or offerors in meeting the contract. For example, when the apparent successful bidder or offeror fails to meet the contract goal, but others meet it, the NMDOT may reasonably raise the question of whether with additional reasonable efforts; the apparent successful bidder or offeror could have met the goal. If the apparent successful bidder or offeror fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders or offerors, the NMDOT may view this, in conjunction with other factors, as evidence of the apparent successful bidder or offeror having made good faith efforts.

If the NMDOT determines that the contractor or bidder or offeror has failed to meet the requirements outlined in paragraph 20.3.1, the NMDOT will, provide the contractor or bidder or offeror the opportunity for administrative reconsideration before awarding the contract or proposal. As part of this reconsideration, the following guidelines apply:

- (a) The contractor or bidder or offeror will have the opportunity to provide written documentation or argument concerning the issue of whether the bidder or offeror met the DBE contract goal or made adequate good faith efforts to do so.
- (b) The NMDOT's decision on reconsideration will be made by an official who did not take part in the original determination that the bidder or offeror failed to meet the DBE contract goal or make adequate good faith efforts to do so.
- (c) The contractor or bidder or offeror will have the opportunity to meet in person with the NMDOT's reconsideration official to discuss the issue of whether it met the DBE contract goal or made adequate good faith efforts to do so.
- (d) The NMDOT will send a written decision on the reconsideration, explaining the basis for finding that the contractor or bidder or offeror did or did not meet the DBE contract goal or make adequate good faith efforts to do so.
- (e) The result of this reconsideration process is not administratively appealable to the USDOT.

If the NMDOT lets a master contract for "design-build" or "turnkey" contract or similar legally binding instrument, to a contractor or consultant, who in turn lets subsequent subcontracts for the work of the project, the NMDOT may establish a DBE contract goal for the project. The master contractor or consultant then establishes DBE contract goals, as appropriate, for the subcontracts it lets. The NMDOT will maintain oversight of the master contractor's or consultant's activities to ensure that they are conducted consistent with the requirements of the NMDOT's DBE Program and 49 CFR Parts 23 (as amended) and 26.

The NMDOT requires that the successful bidder or offeror, or subsequently the prime contractor or consultant, not terminate for convenience a DBE subcontractor or subconsultant listed in Form A-585A DBE A-1, or A-585B DBE A-2 or an approved substitute DBE firm, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the NMDOT's prior written consent See the Termination / Substitution / Replacement of Listed DBE Firms for projects having Race conscious Measures in paragraph 27 of this

program.

- (a) When a DBE subcontractor or subconsultant is terminated, or fails to complete its work on the contract for any reason, the NMDOT will require the prime contractor to make good faith efforts to find another DBE subcontractor or subconsultant to substitute for the original DBE. These good faith efforts will be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established.
- (b) The NMDOT will apply the requirements of this section to DBE contractors or bidders or offerors for prime contracts. In determining whether a DBE contractor or bidder or offeror for a prime contract has met a contract goal, NMDOT will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

### **Counting DBE Participation Toward Goals:**

When a DBE participates in a contract, only the value of the work actually performed by the DBE will be credited towards DBE project goals.

The entire amount of the portion of a construction contract or design or other consultant contract that is performed by the DBE's own forces will be credited. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor or subconsultant purchases or leases from the prime contractor or its affiliate).

Credit will be allowed for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract. Credit will be allowed for fees considered reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor or subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward meeting the DBE project goal.

When a DBE performs as a participant in a joint venture, credit for a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will be allowed.

Credit to a DBE contractor will be allowed only if the DBE is performing a commercially useful function on the contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful

function, an evaluation will be made of the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, an examination of similar transactions, particularly those in which DBEs do not participate will be performed.

If a DBE construction contractor does not perform or exercise responsibility for at least the percentage determined in the NMDOT's Standard Specifications for Highway and Bridge Construction of the total cost of its contract with its own forces, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a commercially useful function.

If a DBE design consultant or other consultant does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own forces, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. It may be determined that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

Decisions concerning commercially useful function matters are not administratively appealable to USDOT.

To determine whether a DBE trucking firm is performing a commercially useful function, the NMDOT will evaluate the amount of work subcontracted, industry practices and other relevant factors.

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.

The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

A lease arrangement or agreement will indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority



The prime contractor may count towards its DBE participation; the total dollar value paid to an owner/operator for the haul. Payments to owner/operators must be certified to by the prime contractor prior to finalizing the project or as work progresses, as required by the NMDOT. If required, the owner/operators must be shown on the prime contractor's certified payroll.

### **Termination/Substitution/Replacement of DBE Firms for Projects Having Race-Conscious Measures:**

The NMDOT requires that the prime contractor or consultant not terminate for convenience a DBE subcontractor or subconsultant or an approved substitute DBE firm, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without a justification letter written to the NMDOT.

If a DBE subcontractor or subconsultant is terminated, or the DBE firm fails to complete its work on the contract for any reason, the NMDOT requires the prime contractor or consultant to make good faith efforts to find another certified DBE subcontractor or subconsultant to substitute for the original DBE firm. These good faith efforts will be documented and directed at finding another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to count DBE participation.

If a DBE subcontractor or subconsultant is unwilling or unable to perform the work to meet the established goal for the prime contractor or consultant, the prime contractor or consultant will immediately notify the NMDOT's appropriate project manager in writing, and request to be relieved of meeting the established goal with the named DBE. The prime contractor or consultant Department will include with this request a justification and the efforts made to deal with the named DBE.

If the prime contractor's or consultant's request to be relieved is approved by the NMDOT, and a DBE contract goal shortfall exists, the prime contractor or consultant will immediately attempt to obtain sufficient DBE participation by subcontracting or subconsulting with other certified DBEs.

If the prime contractor or consultant is unable to replace the DBE with another or other certified DBE firms, the prime contractor or consultant will evaluate the remaining items of work and will document and submit the good faith efforts made to subcontract or subconsultant work with certified DBEs or to purchase materials or supplies from certified DBE suppliers for such remaining items. The NMDOT may allow a DBE contract goal waiver, adjust the DBE goal in accordance submitted and accepted good faith efforts, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances.

### **Prompt Payment Mechanism to Subcontractors:**

To ensure that all obligations under contracts awarded to DBEs are met, the NMDOT will review the construction contractor's or design consultant's and other consultant's DBE involvement efforts during the performance of the contract. Prime contractors or design consultants and other consultants will pay all subcontractors or subconsultants their respective subcontract amount by electronic transfer, if available, for NMDOT undisputed acceptable work within ten

(10) calendar days after the contractor or consultant receives payment for such work from the NMDOT. The construction contractor will be required to submit information as provided for in the supporting software system by indicating when payments made to DBEs and non-DBEs within ten (10) calendar days after the contractor receives payment for such work. A prime contractor, design consultant or other consultant will be required to fully document any alleged disputes with its subcontractors or subconsultants. The prime contractor, design consultant, or other consultant will ensure that all situations in which regularly scheduled payments are not made to subcontractors or subconsultants are reported to the NMDOT. If the prime contractor, design consultant, or other consultant is found to be in violation or fails to abide by the prompt payment mechanisms, the NMDOT will impose sanctions as stated under paragraph 30 Compliance Procedures. The prime contractor, design consultant, or other consultant will further be required to release retain age payments to the subcontractors or subconsultants within thirty (30) calendar days of satisfactory completion of the entire subcontractor's or sub consultant's work and final payment of such work by the NMDOT.

**Record Keeping Requirements:**

The prime contractor or consultant will keep such records as necessary to ensure compliance with its DBE utilization obligations.

As requested, the prime contractor or consultant will submit all subcontracts and other financial transaction documentation executed with DBEs in such form, manner and content as prescribed by the NMDOT.

All such records must be retained by the prime contractor or consultant for at least three (3) years after project acceptance by the FHWA following the completion of the contract. These records will be available for inspection by the NMDOT, the FHWA, the USDOT or other appropriately sanctioned New Mexico State Agencies or Federal Agencies or Departments.

The prime contractor's or design consultant's or other consultant's DBE liaison officer or designee will be responsible for ensuring DBE's complete Form A-644, Disadvantage Business Enterprise (DBE) Participation, and submit the form to the NMDOT, OEOP.

The NMDOT will conduct at a minimum an annual audit on selected construction and consultant projects to verify actual participation reported on Form A-644 Disadvantage Business Enterprise (DBE) Participation.

The NMDOT will maintain, provide data and monitor DBE participation through the following:

Any information related to the operation of NMDOT's DBE Program as directed by USDOT administration.

NMDOT will create and maintain a Participating Contractor or Consultant Annual Profile Registration list consisting of all firms bidding on prime construction and prime consultant design contracts and bidding on quoting as subcontractors and subconsultants, suppliers on USDOT-assisted projects. For every firm, the following information will be annually collected and maintained:

- (a) Firm's name

- (b) Firm's address (including phone, fax and e-mail)
  - (c) Race/Gender
  - (f) Firm's status as a DBE or non-DBE
  - (g) Age of firm
  - (h) The annual gross receipts of firm
  - (i) Primary NAICS Codes
  - (j) Secondary NAICS Codes
- 

A Notice to Construction Contractors Bidders List of Quoter's and Design or Other Consultant Offeror's List of Quoters will be one method used in determining the availability of DBE and non-DBE firms; and therefore the relative availability of ready, willing and able DBEs, for the purpose of establishing and monitoring the NMDOT's state goal.

The NMDOT will require all construction bidders to submit Form BL-DBE-Bidders List of Quoters at the bid letting. Failure to submit this form will render the bidder non-responsive.

The NMDOT will require all design or other consultant offeror's to submit the Design or Other Consultant Offeror's List of Quoters Form. No A-1013 at the time of submittal of the offeror or other consultant proposal. Failure to submit this form will render the offeror's or other consultant's proposal non-responsive.

#### **Compliance Procedures:**

Whenever the NMDOT believes the construction contractor, design consultant or other consultant, or any subcontractor or supplier on a USDOT-assisted contract may not be operating in compliance with the terms, conditions or requirements of this DBE Program, including but not limited to, encouraging fronting, brokering or the circumstance of a DBE not performing a commercially useful function as defined, the NMDOT will conduct an investigation. If it is found that the construction contractor, design consultant or other consultant, any subcontractor or supplier is not in compliance with the DBE Program, the non-compliant party will be notified in writing by the NMDOT. A compliance conference to discuss the area(s) of non-compliance may be held between the NMDOT and the non-compliant party or parties. In the event that the non-compliant party or parties fails or refuses to perform in compliance with the DBE Program or these Selected DBE Program Provisions, a "Notice of Non-Compliance" will be transmitted. If the non-compliant party or parties corrects the deficiencies, the "Notice of Non-Compliance" will be rescinded and the party or parties will be notified as to compliance. If the deficiencies are not corrected, the NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to;

- (a) Termination of the contract.
- (b) For construction, withholding an appropriate percentage of partial payments pursuant to Section 109 of the Standard Specifications for Highway and Bridge Construction. This appropriate percentage may be the amount of any proposed monetary sanction.

- (c) Initiation of appropriate debarment or decertification proceedings.
- (d) Referral of any unlawful actions to the appropriate enforcement agencies.
- (e) Other actions as appropriate, at the discretion of the NMDOT.

**Recipient/Contractor Assurances:**

Each contract the NMDOT enters into with a construction contractor, design consultants, other consultants or recipient on a USDOT-assisted project will ensure that such contract and subcontracts Department will include the following assurance:

Recipient will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The NMDOT will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and the administration of DOT assisted contracts. The NMDOT's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 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.).

The contractor/sub recipient or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will 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 recipient deems appropriate.

## NOTICE TO CONTRACTORS

Incorporated in this contract are three Special Provisions on Equal Employment Opportunity designated as PR-1273 Supplements. These are: (1) Specific Equal Employment Opportunity Responsibilities (23 USC 140); (2) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246); and (3) Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246). This notice is to clarify the responsibilities for review of compliance and enforcement for these separate special provision requirements.

The first of the special provisions cited above covers the requirements for the equal employment opportunity program under Title 23 for which the New Mexico Department of Transportation (NMDOT) is responsible. The NMDOT performs the necessary compliance review and enforcement of this special provision which is applicable to all contractors holding Federal-Aid highway contracts.

The latter two special provisions are for the specific equal opportunity requirements for Executive Order 11246 which is the sole responsibility of the Office of Federal Contract Compliance Program (OFCCP), Department of Labor. Review and enforcement under these special provisions is performed by OFCCP.

OFCCP has, under Paragraph 8 of the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) recognized the Associated Contractors of New Mexico's Heavy Highway Affirmative Action Plan as meeting the provisions of that special provision and special provision (2) cited above. With this recognition, those contractors signatory to the ACNM Plan have been waived from individual review of OFCCP. However, OFCCP retains the right to review any such contractors whenever circumstances warrant. Also, contractors non-signatory to the ACNM Plan are subject to OFCCP review under EO 11246.

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

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

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

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

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

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

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

## 2. Withholding

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

## 3. Payrolls and basic records

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

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

#### 4. Apprentices and trainees

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

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the 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 contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**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.

## **SPECIAL PROVISION**

### **SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES (23 U.S.C. 140)**

#### **1. GENERAL**

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 and Supplements) and these Special Provisions 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 in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions. The initial measure of the Contractor's good faith efforts to comply with these Special Provisions shall be its efforts to meet the goals set forth in the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" for minority and female participation expressed in percentage terms for the Contractor's work force in each trade on this project.
- b. The contractor will work with the New Mexico Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

#### **2. Equal Employment Opportunity Policy**

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity 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/or on-the-job training.

Federal-Aid Highway Program Manual  
Transmittal 147, June 26, 1975

Vol. 6, Ch. 4, Sec.1  
Subsec. 2, Attach. 1

### 3. Equal Employment Opportunity Officer

The contractor will designate and make known to the New Mexico Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

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### 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, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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:
  - 1) 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
  - 2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.
  - 3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.
- b. In order to make the contractor's equal employment opportunity 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 will take the following actions:
  - 1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - 2) The contractor's equal employment opportunity 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.

Federal-Aid Highway Program Manual  
Transmittal 147, June 26, 1975

Vol. 6, Ch. 4, Sec.1  
Subsec. 2, Attach. 1

## 5. Recruitment

- a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will 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 will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employees referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority groups organizations. To meet this requirement, the contractor will, 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.

In the event 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 have 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 will 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 will 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, national origin. 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.

Federal-Aid Highway Program Manual  
Transmittal 147, June 26, 1975

Vol. 6, Ch. 4, Sec.1  
Subsec. 2, Attach. 1

- 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 his 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 his avenues of appeal.~~

**7. Training and Promotion**

- a. The contractor will 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 on-the-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. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirement for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will 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 will use his/her 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 will include the procedures set forth below:

Federal-Aid Highway Program Manual  
Transmittal 147, June 26, 1975

Vol. 6, Ch. 4, Sec.1  
Subsec. 2, Attach. 1

- a. The contractor will 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 will use best efforts to incorporate an equal employment opportunity 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 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 New Mexico Department of Transportation 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 minority and women 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, 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.) 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 New Mexico Department of Transportation.

#### **9. Subcontracting**

- a. The contractor's attention is called to the Special Provision on Minority Business Enterprise in Federal-Aid Highway Construction.
- b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

#### **10. Records and Reports**

- a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
  - 1) the number of minority and non-minority group members and women employed in each work classification on the project,

Federal-Aid Highway Program Manual  
Transmittal 147, June 26, 1975

Vol. 6, Ch. 4, Sec.1  
Subsec. 2, Attach. 1

- 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 for 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 or subcontractors with meaningful minority and female representation among their employees.
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- 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 New Mexico Department of Transportation and the Federal Highway Administration.
  - c. The contractors will submit an annual report to the New Mexico Department of Transportation 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 PR 1391. If on-the-job training is being required by "Training Special Provisions", the contractor will be required to furnish form FHWA 1409.

Revised 6/27/06

**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. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically 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 and which is set forth in the solicitations from which this contract resulted.
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.

**Standard EEO Specifications (6/27/06)**

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 individually required to comply with its obligations under the EEO clause, and to make a 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 Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. ~~The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p 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 Office of Federal Contract Compliance Programs 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, or 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 shall be based upon its 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:

**Standard EEO Specifications (6/27/06)**

- 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 two or more women to each construction project. The Contractor shall specifically 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 organization's 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 may have 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 sent 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 expressly 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 7 b 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 its 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.

**Standard EEO Specifications (6/27/06)**

- 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 Superintendents, 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, specifically 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 one 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, screenings 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 Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least 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 nonsegregated 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.

**Standard EEO Specifications (6/27/06)**

- 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 one or more of 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 any one or more of its obligations under 7a through p 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 its individual 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 single goal for minorities and a separate single 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 particular 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 specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables 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 any 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 violations 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 its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those 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.

**Standard EEO Specifications (6/27/06)**

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 shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the 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).

**Revised 10/27/83**

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

Goals for female participation in each trade:

6.9%

Goals for minority participation for each trade:

38.3% - (SMSA Counties: Bernalillo and Sandoval)

45.9% - (Non SMSA Counties: Catron; Colfax; De Baca; Guadalupe; Lincoln, Los Alamos; McKinley; Mora; Rio Arriba; San Juan; San Miguel; Santa Fe; Socorro; Taos; Torrance; Valencia and Cibola)

49% - (Non SMSA Counties: Chaves; Dona Ana; Eddy; Grant; Hidalgo; Luna; Otero and Sierra)

19.5% - (Non SMSA Counties: Lea and Roosevelt)

11% - (Non SMSA Counties: Curry, Harding, Quay and Union)

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 also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in a 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall

## Notice to Ensure EEO (10/27/83)

make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion date of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" means the geographical area described in the solicitation from which this contract resulted.

\*THIS 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 TO CONTRACTORS**

**November 26, 2013**

### **Subcontractor Prompt Payment Provisions, Clarification of Good Cause and Prohibition of Cross-Project Offset**

Pursuant to 49 CFR 26.29, as implemented by Section 108.1, paragraph 6 of the New Mexico Department of Transportation Standard Specifications and Notice to Contractors "Selected DBE(DBE) Program Provisions Disadvantaged Business Participation in USDOT Assisted Contracts, June 11, 2009, "Prompt Payment Mechanism to Subcontractors", Contractors SHALL pay Subcontractors and Suppliers for satisfactory performance of their contracts no later than seven (7) Days from receipt of each Progress Payment the Department makes to the Contractor. The Contractor SHALL ensure the Subcontractor or Supplier RECEIVES payment within the above-mentioned timeline.

A Subcontractor's or Supplier's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented and Accepted by the Department. When the Department makes an incremental Acceptance of a portion of the Work, the Work of a Subcontractor or Supplier covered by that Acceptance is deemed to be satisfactorily completed, triggering the Contractor's obligation to promptly pay for that portion of the Work.

The Contractor has the burden of proving compliance with these prompt payment provisions and SHALL do so through its timely B2GNow reporting obligation. The Department may recognize supporting documentation of such payment in one or more of the following forms: (1) proof of the timely deposit of funds into the Subcontractor's or Supplier's bank account, (2) proof of hand delivery of timely payment to the Subcontractor or Supplier, or (3) proof of mailing payment to the Subcontractor or Supplier, postmarked no less than three (3) Days prior to the expiration of the seven (7) Day period.

The ONLY good cause recognized by the Department to excuse a payment beyond the timing set in Section 108.1, paragraph 6, is a claim concerning the Subcontractor's or Supplier's Work. Within a project, the Contractor may only withhold a Subcontractor's or Supplier's payment for Work undisputed and Accepted by the Department upon proof of a claim between the Contractor and Subcontractor for the work at issue. Such proof must be submitted in accordance with Contract provisions, including but not limited to the Notice to Contractors, "Selected DBE (DBE) Program Provisions Disadvantage Business Participation in USDOT Assisted Contracts". The Contractor has the burden of proof to support the Contractor's assertion of good cause and must submit verifiable explanation and proof of the claim between the parties to the Project Manager within the same timeframe for prompt payment, seven (7) Days.

The Contractor is further advised that due to recent federal (FHWA) interpretations of 49 C.F.R Part 26, concerning prompt payment obligations to Subcontractors and Suppliers,

the Department can no longer Accept cross-project offsets as “good cause” excusing untimely payment for undisputed Accepted Work. As a result, the Contractor’s contract with Subcontractors or Suppliers shall NOT contain any provision that allows the Contractor to withhold payment from the Subcontractor or Supplier as a result of the Subcontractor’s or Supplier’s performance on separate contract(s). Any such provision will be without effect, and shall NOT provide good cause excusing a failure to make prompt payment in accordance with the Contract.

This Notice does not alter the sole discretion of the Office of Equal Opportunity Programs to make good cause determinations concerning Contractor prompt payment matters.

# NOTICE TO CONTRACTORS

October 23, 2013

## Cooperation With Utilities

**This work shall be considered incidental to the completion of the project and no separate measurement or payment will be made.**

Contractors shall comply with their legal obligation to follow all of the NM One-Call provisions Chapter 62 Article 14 NMSA 1978 - Excavation Law. Those provisions can be located at:

[http://www.nmprc.state.nm.us/transportation/pipeline/docs/Excavator%20Manual%202013-Eng\\_Web.pdf](http://www.nmprc.state.nm.us/transportation/pipeline/docs/Excavator%20Manual%202013-Eng_Web.pdf).

Specific to those provisions are the requirements for an excavator to preserve line location markings or provide an offset mark before obliterating a locate mark. Also included in those provisions are restrictions on the appropriate use of emergency line locates. Specifically, an emergency is defined as an excavation that must be performed due to circumstances beyond the control of the excavator (UFO) and that affects public health, safety or welfare. Additionally, an emergency locate request should not be used to circumvent poor job planning or economic consequences. Abuse of emergency location requests is a violation of the excavation law and is subject to significant administrative fines.

If a Contractor's activities destroys, obliterates, covers or in any way alters utility markings put in place by the NMDOT (or by a third party on behalf of the NMDOT), the Contractor shall ensure that those line markings are reestablished before they begin or any Sub-Contractor to them (including tiered Sub-Contractors) begins work in the affected area. The Contractor shall either re-mark the utility alignments or provide offset markings to the utility alignment that clearly define the utility alignment. The Contractor shall both photo-document the utility markings in their construction area prior to disturbing those markings and photo-document the remarked utility alignment or the offset markings to ensure accuracy to the original markings. Photos will clearly identify distances and/or recognizable features needed to ensure re-marks or offset marks are accurate.

If, as a result of failure by the Contractor or Sub-Contractor to accurately reestablish previously placed line markings damage occurs to any NMDOT-owned utility infrastructure (including but not limited to electrical service lines, DSL lines, and fiber optics communication lines, associated conduits/pull boxes/manholes, pull tapes and locate wires), the Contractor shall be responsible for all associated repair costs. All damaged infrastructure will be repaired as an emergency repair (within 24-hours), and shall be in accordance with NMDOT standards and specifications. In addition, any delays associated with the project schedule as a result of repairing such damage shall be absorbed by the Contractor not by the project.

Because utility clearance is directly associated with the Contractor's project activities, costs to repair any damage to NMDOT-owned utilities from failing to comply with the provisions of NM One Call can, and if necessary will, be recovered from the Contractor's project performance bond. Recoverable expenses shall also include any costs incurred by the Department while performing emergency line locates resulting from the Contractor's request of such locates, if those requests are not consistent with the definition established by NM One-call provisions.

## **NOTICE TO CONTRACTORS**

**March 7, 2014**

### **Professional Services**

Reference is made to New Mexico Department of Transportation's 2014 Edition of the Standard Specifications for Highway and Bridge Construction, Subsection 101.4 – Terms and Definitions. The following has been added to the definition for Professional Service:

A Professional Service provider is not considered a Subcontractor unless Work is performed within the Project limits.

A Professional Service provider shall be pre-qualified in accordance with NMAC 18.27.5 when utilized as a Subcontractor as indicated above.

## **NOTICE TO CONTRACTORS**

### **Work Zone Safety and Mobility Rules October 13, 2011**

In accordance with 23 CFR 630 Subpart J-Work Zone Safety and Mobility, the following Memorandum establishes requirements to be implemented and provides guidance for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on highway projects.



MEMORANDUM

To: All Contractors working on NMDOT and federally supported projects for NMDOT
From: Alvin Dominguez PE, Cabinet Secretary NMDOT
Date: June 6, 2011
RE: Work Zone safety and Mobility Rules

Handwritten signature of Alvin C. Dominguez, P.E.

Susana Martinez
Governor

Alvin C. Dominguez, P.E.
Cabinet Secretary

Commissioners

Pete Rahn
Chairman
District 3

Debra Hicks
Vice Chairman
District 2

Dr. Kenneth White
Secretary
District 1

Ronald Schmeits
Commissioner
District 4

Butch Mathews
Commissioner
District 5

Jackson Gibson
Commissioner
District 6

NMDOT's policy is to plan, design, construct and maintain highways while providing for the safe and efficient movement of all modes of transportation through or around a temporary traffic control zone and to ensure safety of the workers (both NMDOT and contractor). The goal of this policy is to promote a commitment to implement the requirements of the Work Zone Safety and Mobility Policy (23 CFR 630 Subpart J) by:

- 1. Providing safe work zones for workers and motorists.
2. Reducing the number of crashes and deaths in work zones
3. Improve training for all project staff involved in plan development and construction administration related to work zones
4. Improve work zone procedures over time by using knowledge and observations gained from past work zones.
5. Develop and implement Transportation Management (TMP's) for work zones.

In order for NMDOT to implement this policy, NMDOT is reaching out to all contractors to communicate our policy for "Federal Highway Administration 23 CFR Part 630 Work Zone Safety and Mobility Rule" NMDOT's policy is in the form of design directive to comply with the rules. They are as follows

- 1. IDD-2009-2 Work Zone Traffic Control

http://nmshtd.state.nm.us/upload/images/Contracts\_Unit/IDD-2009-02.pdf

2. IDD-2009-05- Temporary Traffic Control Devices Rule- Subpart - K

[http://nmshtd.state.nm.us/upload/images/Contracts\\_Unit/IDD-2009-05.pdf](http://nmshtd.state.nm.us/upload/images/Contracts_Unit/IDD-2009-05.pdf)

**Strict compliance to NMDOT/MUTCD policies is required by all contractors working on NMDOT and Local Government projects. In addition to compliance of NMDOT/MUTCD polices, all contractors shall adhere to Section 618 "Traffic Control Management", Section 702 "Construction Traffic Control Devices" of the NMDOT Standard Specifications and all applicable Section 700's of the Contract Special Provisions for all NMDOT projects.**

As the result of our design directives several key points are emphasized:

- "Truth in signing" program and policy
- Quality of traffic control devices to follow NMDOT quality standards
- Training and certification for traffic control Design Specialists, technicians, and supervisors
- Proper documentation and maintenance of the traffic control diary
- Improve worker visibility
- Adherence to NMDOT policy for positive protection devices
- Proper installation and maintenance of temporary traffic control devices during construction
- Positive protective barriers between workers and the motorized traveling public
- Safe entry/exit for work vehicles and equipment
- Use of uniformed law enforcement

NMDOT recognizes the importance of working with our contractors to provide safe work zones for workers and the traveling public. It is imperative that all contractors working on NMDOT and Local Government Projects fully understand the Work Zone Safety and Mobility Policy (23 CFR 630 Subpart J) in order to provide safe work zones through their construction projects for the traveling public and workers.

Your cooperation to implement these rules is required.

Primary Points of Contact on Compliance at NMDOT are as follows:

- State Traffic Engineer (Design Standards & Policies, technical Support)
- District Traffic Engineers (Maintenance & Construction Operations Support, Data Analysis, Work Zone Implementation)
- State Construction Engineer (Construction Support)

## **NOTICE TO CONTRACTORS**

**June 23, 2011**

### **NMDOT Office of Inspector General**

New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, the Department's Office of Inspector General (OIG) has the authority to carry out all duties required to collect information, conduct audits, special studies and investigations. The duties are the same as those specified in federal law: Office of Inspector General, 23 USC §302 (the capability to carry out the duties required by law); 23 USC §112 (contracting for engineering and design services); 23 USC §106 (project approval); 23 USC 112 - Sec. 112, (letting of contracts); 23 USC 113 - Sec. 113 (prevailing rate of wage); 23 USC 114 - Sec. 114 (construction); 23 CFR 635 & 23 CFR 636 (design build); 23 CFR 637 (construction inspection approval). The duties of the Department's OIG also arise from the responsibility all state Departments of Transportation have for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U .S.C. 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

OEOP  
May 14, 2015

## Notice to Contractors

### Equal Employment Opportunity (EEO) Software Programs Federal-aid Projects

The prime contractor and all subcontractors working on federal-aid projects shall use the following EEO Software Programs to report specific EEO, Labor Compliance and Disadvantaged Business Enterprise (DBE) information as required by the contract and as specified by the NMDOT's Office of Equal Opportunity Programs. The two software programs are:

- B2Gnow software
- LCPtracker software

B2Gnow – (Business to Government Now), is a web-based software program used to collect, verify and manage payment information for prime contractors and subcontractors working on federal-aid projects. Additionally, the software is used to collect and report DBE participation and utilization on federal-aid projects.

LCPtracker – (Labor Compliance Program Tracker) – LCPtracker is a web-based software program used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation for prime contractors and subcontractors on federal-aid projects.

Use of B2Gnow and LCPtracker software programs is required and shall be considered incidental to the contract. Failure of a contractor or subcontractor to use the required software programs to report specific EEO, Labor Compliance and DBE information may result in NMDOT withholding future progress payments until such time as compliance with this requirement is achieved. Weekly submission of hard copy certified payrolls remains mandatory.

Information on access to the software programs, log-on information, use of the programs, available training, user manuals, etc. can be obtained by contacting:

New Mexico Department of Transportation  
Office of Equal Opportunity Programs  
1570 Pacheco Street, Suite A10  
Santa Fe, NM 87505  
(505) 827-1774 or Toll Free (800) 544-0936

## **NOTICE TO CONTRACTORS**

**February 7, 2008**

### **New Mexico Employees Health Coverage**

1. For all contracts solicited and awarded on or after January 1, 2008: If the offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, offeror must agree to:

(a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

**For all contracts exceeding one million dollars, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2008, health insurance to its New Mexico employees.**

**For all contracts exceeding \$500,000 dollars, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2009, health insurance to its New Mexico employees.**

**For all contracts exceeding \$250,000, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2010, health insurance to its New Mexico employees.**

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# **NOTICE TO CONTRACTORS**

**June 6, 2014**

## **Subcontractor Payment and Performance Bonds**

Senate Bill 814, passed during the New Mexico 47<sup>th</sup> Legislature shall not apply to this Project.

NOTICE TO CONTRACTORS

January 13, 1994

You are hereby advised that Form FHWA-1273, Required Contract Provisions - Federal Aid Construction Contracts is supplemented by the addition of the following:

"II. NONDISCRIMINATION

PREFERENCE EMPLOYMENT OF INDIAN TRIBES

Preference shall be given to members of the Indian Tribe in every aspect of employment including, without limitation of the foregoing, initial hiring, training, promotions, and in situations of termination and reductions in force.

This contract requirement is an expansion of the special provisions pertaining to the specific equal employment opportunity responsibilities for Contractors contained elsewhere in this contract and the provisions contained under FHWA-1273. It is the intent that preferential treatment will be given to Indians. The Contractor will be required to establish liaison for contact persons with local tribal employment offices. The tribal office will then assist contractors in providing Indians with skills and experience."

The above preferential clause will be interpreted to mean that the Contractor will be allowed to move in with his normal supervisory construction force and other specially experienced individuals. Indian preference in employment, training and promotions will be in effect for all other positions or classifications provided there are Indians available who can do the work required. Verification of the availability will be made with the local tribal office.

In addition to the Special Provision for submission of weekly payrolls, all contractors and subcontractors shall be required to submit one (1) additional certified copy of the project weekly payrolls to the state's project manager.

This Notice to Contractors will be deemed as supplemental to and not in conflict with 41 CFR 60-1.5(a)(6) which provides as follows.

"(6) Work on or near Indian Reservations---It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or Subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter. (Subsection 6, as added, effective February 17, 1977)."

**NOTICE TO CONTRACTORS**

**September 14, 1994**

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "Hotline" Monday through Friday, 8:00 A.M. to 5:00 P.M., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "Hotline" to report such activities.

The "Hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

**NOTICE TO CONTRACTORS**  
**LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS**  
**April 1, 2014**

The New Mexico Department of Workforce Solutions (“DWS”) mandates tracking a construction Project’s weekly payrolls and the process by which this reporting is accomplished by the Contractor. Knowledge of the DWS rules and procedures is attributed to the Contractor prior to its Bid submission. The latest forms posted in the DWS website, <http://www.dws.state.nm.us>, must be used for submittals. All outdated forms submitted will be rejected by the Department. If rejected, the Contractor/Subcontractors will be required to submit the current DWS forms.

The following requirements apply to those Contractors and Subcontractors performing Work subject to this Contract’s prevailing wage rates:

The Contractor and each Subcontractor (at all tiers) shall complete an original DWS “Statement of Intent to Pay Prevailing Wages” form prior to starting Work on the job site. The Contractor shall provide a copy of each form to the Project Manager in accordance with Standard Specification Section 108.2. For Subcontracts established later on in the Project, the Contractor shall ensure that the Subcontractor’s “Statement of Intent to Pay Prevailing Wages” form is submitted to the Project Manager with the “Request for Permission to Subcontract” forms. No Subcontracts shall be approved without the proper forms indicated above.

Once construction begins, the Contractor shall submit weekly payroll information. The Contractor shall ensure that all Subcontractors at all tiers submit weekly payroll information. Weekly payroll information shall be submitted as follows:

- On Federally funded and Federal-aid Projects, the Contractor shall submit and shall ensure all Subcontractors submit weekly payroll information into the LCPTracker software program.
- On 100% State funded Projects, the Contractor shall submit, and shall ensure that all Subcontractors submit one (1) certified hard copy of the Project weekly payroll to the Project Manager’s office. Utilization of LCPTracker is not available for 100% State funded Projects.

All payrolls for the Project shall be submitted no later than five (5) Working Days following the close of the second payroll period.

Prior to release of the Final Payment, the Contractor and each Subcontractor (at all tiers) shall complete an original DWS “Affidavit of Wages Paid” form. The Contractor shall submit a copy of all Affidavits of Wages Paid for the Contractor and all Subcontractors to the Project Manager, in accordance with Standard Specification Section 109.10.7.

Each Contractor and Subcontractor shall preserve its weekly payroll records for a period of four (4) years from the date of completion of the Contract.

On state funded Projects, the Rules and Regulations under the New Mexico Public Works Minimum Wage Act are, by this reference, made a part of this Contract. On Federally-funded Projects, these provisions hereby supplement Paragraph V, Part 2 of the Required Contract Provisions on all Federal Aid Construction Contracts, FHWA-1273.

**NOTICE TO CONTRACTORS**  
**APPRENTICES/TRAINEES**  
**(Program of Department of Labor)**

**June 24, 2014**

**YOU ARE HEREBY ADVISED OF THE FOLLOWING:**

Before using apprentices/trainees of this project, the Contractor shall present to the Contracting Officer written evidence of registration of such employees. All apprentices shall be properly indentured and in compliance under registered apprenticeship standards and written apprenticeship agreements. All trainees must be properly enrolled in a bona fide training program approved for application on construction projects by the appropriate state and/or federal agency(ies). Written evidence of apprenticeship registration from the U.S. Department of Labor, Bureau of Apprenticeship and Training, Bank of America Building, 500 4<sup>th</sup> St., N.W., Suite 401, Albuquerque, New Mexico 87102, Telephone No. (505) 248-6530 is required for apprentices. Certification from the registered program Administrator showing enrollment status of trainees is required for trainees. If the apprentice/trainee is not registered in a bona fide apprenticeship/training program as mentioned above, the journeyman's wage rate for that particular classification in which he/she is working is applicable.

OEOP  
May 14, 2015

## NOTICE TO CONTRACTORS

### Required Contract Provisions Title VI - Civil Rights Act

The New Mexico Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d- 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notified all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority and women business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin or handicap in consideration for an award.

Reference is made to the Department's Title VI Plan, Appendix A and Title VI assurances.

For further information, contact the Office of Equal Opportunity Programs Bureau located at 1570 Pacheco St, Suite A10, PO Box 1149, Santa Fe, New Mexico, 87504-1149, Telephone Number (505)827-1778.

Construction Civil Rights Bureau  
August 13, 2015

## NOTICE TO CONTRACTORS

- **Civil Rights Obligations**

- I. TITLE VI
- II. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS CLARIFICATION OF GOOD CAUSE AND PROHIBITION OF CROSS-PROJECT OFFSET
- IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS (FHWA-1273)
- V. SUPPLEMENTAL EEO REQUIREMENTS
- VI. INDIAN PREFERENCE
- VII. NMDOT ON THE JOB TRAINING (OJT) PROGRAM
- VIII. WAGE RATES
- IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS
- X. TITLE VI ASSURANCES APPENDIX A AND APPENDIX E

Any reference made to the New Mexico Department of Transportation ("NMDOT") web page can be accessed through the following link: <http://dot.state.nm.us/en.html>.

### I. TITLE VI

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

The NMDOT's Title VI Assurances, Appendix A and E and are included in Section X. at the end of this NTC.

For further information, contact the Title VI coordinator for the NMDOT by accessing the web page listed above.

### II. DISADVANTAGED BUSINESS ENTERPRISE ("DBE")

In accordance with 49 CFR 26.13 (b), the Contract NMDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which *may* result in the termination of this contract or such other remedy as the recipient deems appropriate, which *may* include, but is not limited to: (1) Withholding of monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible .."

### Terms and Definitions (pursuant to 49 CFR 26.5)

Terms and Definitions are incorporated by reference to 49 CFR 26.5 or the New Mexico State Department of Transportation Standards Specifications for Highway and Bridge Construction.

### Pre Award Procedures

For all Projects, the Contractor's Bidder's List of Quoters (Form BL-DBE) in the Bid package is required to be submitted at the time of bid for award of Contract. Failure to comply with this requirement shall render a bid as non-responsive and the bid shall be rejected.

For Projects with DBE Goals (race-conscious measures), the following DBE forms are required to be submitted for Award of Contract:

- a) All Bidders will complete and sign Form A-585 and submit it with the Bid. All DBE firms listed on Form A-585 must be listed on the NMDOT DBE Directory before the date of submission. The Directory is available on the NMDOT web page referenced in this NTC, the web page can be accessed through the following link: <https://nmdot.dbesystem.com/FrontEndNendorSearchPublic.asp?TN=nmdol&XID=4599>. Each DBE firm's NAICS Code may be found in the DBE Directory. The information required by Form A-585 DBE A-1 and form A-585 DBE A-2 must be complete and accurate in every detail and in final form at the time it is submitted to the NMDOT for approval. This form will be evaluated prior to the award of the Contract. Failure to submit either document in proper form and accuracy will render the Bid or proposal non-responsive.
- b) All Bidders will complete and notarize Form A-644 for each listed Subcontractor, Supplier and/or manufacturer on the submitted Form A-585 within seven (7) Days after the Bid opening. The information required by Form A-644 must be complete and accurate in every detail and in final form at the time it is submitted to the NMDOT for approval.

In the event the successful Bidder is a certified DBE Contractor. The Bidder shall list itself and any other DBE subcontractor on Form A-585.

In the event the Bidder cannot meet the established DBE Goal. The Bidder shall submit evidence of its good faith efforts taken to meet the goal. These good faith efforts must be submitted within seven (7) Days after the Bid Opening.

These forms shall be submitted in a manner as provided on the Form. Failure to timely submit the form(s), meet the goal or demonstrate good faith efforts will render the Bid non-responsive and the Bid shall be rejected.

The Contract will be awarded to the lowest qualified and responsible Bidder who gives written assurance to meet the established DBE Contract goal or who can satisfactorily demonstrate good faith efforts why it cannot do so.

The following is a list of types of actions, which the NMDOT will consider as part of the Bidder's or offeror's good faith efforts to obtain DBE participation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. This demonstration should include, but not be limited to, the following:

- a.)
  - 1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at the pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of the Notice of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the NMDOT DBE directory of firms that specialize in the areas or work desired and which are located in the area or surrounding areas of the project.
  - 2) The bidder should solicit this interest as early in the acquisition process as possible as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b.) Selecting portions of the Work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to facilitate DBE participation, even when the prime Contractor or prime consultant might otherwise prefer to perform these Work items with its own forces.
- c.) Providing interested DBEs with adequate information about the construction plans, construction specifications, design scope of Work and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
- d.)
  - 1) Negotiating in good faith with interested DBEs. It is the Bidder's or offeror's responsibility to make a portion of the Work available to DBE Subcontractors, subconsultants and Suppliers and to select those portions of the Work or material needs consistent with the available DBE Subcontractors, subconsultants and Suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the construction plans and specifications for the Work selected for subcontracting or requirements and design scope of Work of the AFP and subconsulting; and evidence as to why additional agreements could not be reached for DBEs to perform the Work.
  - 2) A Bidder or offerer using good business judgment would consider a number of factors in negotiating with Subcontractors including DBE Subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's or offeror's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of the prime Contractor or consultant to perform the Work of a Contract with its own organization does not relieve the Bidder or offerer of the responsibility

to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs, if the price difference is excessive or unreasonable.

- e) 1) Prime Contractors and consultants will not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's or consultant's standing within its Industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Bids or proposals in the Contractor's or design consultant's efforts to meet the Project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for Work was not the lowest received. However, nothing in this paragraph will be construed to require the bidder or prime Contractor to accept unreasonable quotes to satisfy contract goals.
- 2) A prime Contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Contractor has the ability and/or desire to perform the contract the Work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- f.) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient, Contractor or consultant.
- g.) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h.) Effectively using the services of available minority/women community organizations ; minority/women Contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a Bidder has made good faith efforts, the NMDOT must take into account the performance of other Bidders in meeting the Contract. For example, when the apparent successful Bidder fails to meet the Contract goal, but others meet it, the NMDOT may reasonably raise the question of whether with additional reasonable efforts, the apparent successful Bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the NMDOT may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made GFEs. NMDOT requires the Contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for Work on the Contract to review whether DBE prices were substantially high and contact the DBEs listed on a Contractor's solicitation to inquire as to whether DBE prices were contacted by the prime. Proforma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

A promise to use DBEs after Contract award is not considered to be responsive to the Contract solicitation or to constitute good faith efforts.

When the NMDOT determines that the Bidder has failed to meet the GFE requirements, the NMDOT will, provide the Bidder notice and the opportunity for administrative reconsideration before awarding the Contract. Failure to timely request reconsideration shall result in the determination that the Bid is non-responsive and shall be rejected. Within seven (7) Days of a timely request for reconsideration the NMDOT shall conduct a hearing on the matter.

As part of this reconsideration, NMDOT shall follow Standard Specifications Section 103.3 "Bidding Disputes and Resolution Procedures".

### Counting DBE Participation Toward Goals

This section in no way alters the obligations in Standard Specification 108.1 "Subcontracting" and is only used to determine DBE participation levels for each Bidder. The Contractor must still comply with 108.1 and perform with its own forces at least 40% of the Work based on the Total Bid Amount.

NMDOT shall verify Bidders commitment to meeting or exceeding the established DBE goal in accordance with 49 CFR part 26.55 and as referenced in the NMDOT DBE Program Manual. Only the value of the Work actually performed by the DBE will be credited towards DBE Project goals. DBE participation shall be credited as follows:

- 1) Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE of the Work of the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment purchased or leased by Contractor shall not be counted toward the DBE goal.
- 2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required of the performance of a NMDOT Contract, toward DBE goals, provided NMDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 3) When a DBE subcontracts part of the Work of its Contract to another firm, the value of the subcontracted Work may be counted toward DBE goals *only* if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- 4) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with own forces toward DBE goals.

NMDOT shall verify performance during the course of the Project and count expenditures to a DBE Contractor toward DBE goals only if the DBE is performing a Commercially Useful Function ("CUF") on that Contract.

A DBE performs a CUF when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable)

and paying for the material itself. To determine whether a DBE is performing a CUF, an evaluation by the NMDOT will be made of the amount of Work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the Work it is actually performing and the DBE credit claimed for its performance of the Work and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Contract, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, an examination of similar transactions, particularly those in which DBEs do not participate will be performed by the NMDOT.

If a DBE Contractor or Subcontractor does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own forces, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved, it will be presumed that the DBE is not performing a CUF.

When a DBE is presumed not to be performing a CUF as provided above, the DBE may present evidence to rebut this presumption. It may be determined that the firm is performing a commercially useful function given the type of Work involved and normal industry practices.

Decisions concerning CUF matters are not administratively appealable to USDOT.

#### DBE Trucking

Per the Standard Specifications 2014 Edition states 108.1 states, "A Trucker is not a Subcontractor unless the Contractor is using the Trucker to meet the DBE requirement associated with the project."

The following factors shall be used to determine whether a DBE trucking subcontractors are performing a commercially useful function:

- 1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- 2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a OBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- 5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks

with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

*Example):* DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and *may* also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

- 6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

*Example):* DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

- 7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

The following factors shall be used to determine how to count expenditures with DBEs for materials or supplies toward DBE goals:

- 1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character describes by the Specifications.
- 2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character describes by the Specifications and required under the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. The DBE firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business. If DBE firm both owns and operates distribution equipment for the products. Any supplementing of regular

dealers' own distribution equipment shall be by a long-term lease agreement and not on ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other person who arrange or expedite transactions are not regular dealers.

- 3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees and commissions charges for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, toward DBE goals, provided you determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials or supplies themselves is not creditable toward DBE goals.

Credit for Work performed shall not be counted toward the DBE project goal until the amount committed has been paid to the DBE firm.

Termination/Substitution/Replacement of DBE Firms for Projects Having a DBE goal (Race Conscious Measures)

The Contractor shall use the DBE firms listed on Form A-585A to perform specific Work identified. The prime contractor shall not terminate a DBE subcontractor listed on Form A-585A (or an approved substitute DBE firm) without the prior written consent of NMDOT. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, or with a non-DBE firm, or with a substitute DBE firm. Unless NMDOT consent is provided, the Contractor shall not be entitled to any payment for Work or materials unless it is performed by the listed DBE.

NMDOT will provide written consent to the termination request only if NMDOT agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- 1) The listed DBE subcontractor fails or refuses to execute a written contract;
- 2) The listed DBE subcontractor fails or refuses to perform the work consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal to perform results from the bad faith or discriminatory action of the prime contractor;
- 3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- 4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant to 26 CFR Parts 180, 215 or 1200 or applicable state law;
- 6) The listed DBE subcontractor is not a responsible contractor;

- 7) The listed DBE subcontractor voluntarily withdraws from the project and provides to NMDOT written notice of its withdrawal;
- 8) The listed DBE subcontractor is ineligible to receive DBE credit for the type of work required;
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the project; or
- 10) Other documented good cause that NMDOT determines compels the termination of the DBE subcontractor. Provided that good cause does not exist if the prime contractor seeks to terminate a DBE it relied on to obtain the contract so that the prime contractor can self-perform the work for which the DBE subcontractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

The prime contractor shall, before transmitting to NMDOT its request to terminate or substitute a DBE subcontractor, give notice in writing to the DBE subcontractor, with a copy to NMDOT, of its intent to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE subcontractor 5 Days to respond to the prime contractor's notice and advise the prime contractor and NMDOT of the reasons, if any, why it objects to the proposed termination of its subcontract and why NMDOT should not approve the prime contractor's request.

As soon as possible, after receipt and review of the DBE subcontractor's response, or after the expiration of the 5 Day response period, NMDOT shall provide a written response to the prime contractor's request. NMDOT may seek additional information as necessary to formulate its response. NMDOT's decision is not appealable to USDOT.

If termination of the DBE subcontractor does not result in a DBE contract goal shortfall, NMDOT strongly encourages the prime contractor to make good faith efforts to subcontract with a substitute DBE firm which can perform the same type of work on the project as the terminated DBE firm or to subcontract with a replacement DBE firm which can perform other types of work remaining on the project.

If termination of the DBE subcontractor results in a DBE contract goal shortfall, the prime contractor shall either:

- 1) Make good faith efforts to obtain sufficient DBE participation to meet the contract goal by subcontracting with a substitute DBE firm which can perform the same type of work on the project as the terminated DBE firm; or
- 2) Make good faith efforts to obtain sufficient DBE participation to meet the contract goal by subcontracting with a replacement DBE firm which can perform other types of work remaining on the project.

The prime contractor shall document its good faith efforts to find another certified DBE subcontractor to substitute for or replace the terminated DBE firm. (Refer to 49 CFR Appendix A to Part 26 for guidance in determining the adequacy of good faith efforts.)

The prime contractor shall, in writing, request approval from NMDOT to utilize a substitute or replacement DBE firm to meet the contract goal. In its request, the prime contractor shall detail the work items to be performed and the estimated dollar amount to be subcontracted.

As soon as possible, after receipt and review of the prime contractor's request, NMDOT shall provide a written response to the prime contractor. NMDOT may seek additional information as necessary to formulate its response. NMDOT's decision is not appealable to USDOT.

If the prime contractor is unable to secure a substitute or replacement DBE subcontractor to perform the work to meet the contract goal, the prime contractor shall immediately notify NMDOT in writing, and request to be relieved of meeting the contract goal. The prime contractor shall include with this request a justification, including the documented good faith efforts made to find another certified DBE firm.

As soon as possible, after receipt and review of the prime contractor's request, NMDOT shall provide a written response to the prime contractor. NMDOT may seek additional information as necessary to formulate its response. NMDOT may allow a DBE contract goal waiver, adjust the DBE goal, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances. NMDOT's decision to waive or adjust the contract goal is not appealable to USDOT.

Failure of the Contractor to carry out the requirements of the above is a material breach of Contract and may result in the termination of the Contract or such other remedies set forth in this NTC if the Contractor fails to comply with these requirements.

#### Record Keeping Requirements

The Contractor shall keep such records as necessary to ensure compliance with its DBE utilization obligations, in accordance with Standard Specification Section 107.28 "Contractor Records".

#### Compliance Procedures

The Contractor is solely responsible and obligated to ensure DBE compliance at all tiers until the final payment is made in accordance with Standard Specification Section 109.10 "Project Closure". Additionally, the Contractor shall take any necessary corrective measure necessary to fully comply with this NTC.

Whenever NMDOT believes the construction contractor or any subcontractor or supplier on a USDOT-assisted contract may not be operating in compliance with the terms, conditions or requirements of this DBE Program, NMDOT will conduct an investigation. If it is found that the construction contractor or any subcontractor or supplier is not in compliance with the DBE Program, NMDOT will notify the non-compliant party in writing. NMDOT may conduct a compliance conference with the non-compliant party or parties to discuss the area(s) of non-compliance. In the event that the non-compliant party or parties fails or refuses to perform in compliance with the DBE Program or the Selected DBE Program Provisions, NMDOT will send the non-compliant party or parties a "Notice of Non-Compliance". If the non-compliant party or parties corrects the deficiencies, NMDOT will rescind the "Notice of Non-Compliance" and notify the party or parties. If the deficiencies are not corrected, NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to:

- 1) Termination of the contract.
- 2) Withhold monthly progress payments.
- 3) Initiation of appropriate suspension or debarment or decertification proceedings.
- 4) Referral of any unlawful actions to the appropriate enforcement agencies.
- 5) Other actions as appropriate, at the discretion of NMDOT.

### B..1 III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS

To ensure that all obligations to promptly pay Subcontractors are met Contractors shall pay all Subcontractors, Suppliers and Fabricators their respective subcontract amount by electronic transfer, if available, for NMDOT undisputed Acceptable Work within the timeframes specified in the Standard Specification Section 10B.1 "Subcontracting".

The Contractor is solely responsible and obligated to ensure prompt payment obligations and compliance reporting through all tiers until the final payment is made in accordance with Standard Specification Section 109.10 "Project Closure". Contractors at all tiers shall be required to submit payment information, as provided for in the B2GNow supporting software system, indicating when payments are made to any Subcontractor, Supplier and or Fabricator, regardless of DBE status. The Department may recognize supporting documentation of such payment(s) in one or more of the following forms:

- 1) Proof of the timely deposit of funds into the Subcontractor, Supplier and or Fabricator bank account;
- 2) Proof of hand delivery of timely payment to the Subcontractor, Supplier and or Fabricator; or
- 3) Proof of mailing payment to the Subcontractor, Supplier and or Fabricator postmarked no less than three (3) Days prior to the expiration of the ten (10) Day prompt payment period.

The Contractor's prompt payment obligation is triggered when the Subcontractor's, Supplier's and or Fabricator's Work is satisfactorily completed when the associated Pay Item has been accepted by NMDOT. If the NMDOT makes an incremental Acceptance of a portion of the Work, the Work of a Subcontractor, Supplier and or Fabricator is covered by that Acceptance is deemed to be satisfactorily completed, triggering the Contractor's obligation to promptly pay for that portion of the Work.

A Contractor will be required to fully document any alleged disputes with its Subcontractors, Suppliers and or Fabricators. The Contractor shall ensure that all situations in which regularly scheduled payments are not made to Subcontractors, suppliers and or Fabricators are reported to the NMDOT.

A Contractor must demonstrate good cause to NMDOT for any failure to fully or partially provide prompt payment.

Good cause recognized by the Department to excuse a failure to promptly pay, is a claim concerning the Subcontractor's or Supplier's Work, failure to provide certified payrolls, and other required project documentation. The amount withheld cannot exceed the amount in dispute between the Contractor and Subcontractor or Supplier. Within a Project, the Contractor may only withhold a Subcontractor's or Supplier's payment for Work Accepted by the NMDOT upon proof of a claim between the Contractor and Subcontractor for the Work at issue. The Contractor has the burden of proof to support the Contractor's assertion of good cause and must submit verifiable explanation and proof of the claim between the parties to the Project Manager.

The Contractor is further advised that due to federal highway administration (FHWA) interpretations of 49 CFR Part 26, concerning prompt payment obligations to Subcontractors and Suppliers:

- 1) The NMDOT will not Accept cross-Project offsets as "good cause" excusing untimely payment for Accepted Work.

The Contractor's Contract with Subcontractors or Suppliers SHALL NOT contain any provision that allows the Contractor to withhold payment from the Subcontractor or Supplier as a result of the Subcontractor's or Supplier's performance on separate Contract(s). Any such provision will be without effect, and SHALL NOT provide good cause excusing a failure to make prompt payment.

This Notice does not alter the sole discretion of the NMDOT to make good cause determinations concerning Contractor prompt payment matters.

- 2) The NMDOT will require Contractor's to pay all retainage owed to the Subcontractor or Supplier within 30 days of the progress payment indicating Acceptance of the Work. The Contractor *may* request Partial Acceptance in accordance with Standard Specifications 105.18.1 "Partial Acceptance" upon satisfactory completion of the entire Subcontractor's Work.

#### IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS

FHWA-1273- Revised May 1, 2012

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety:Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

- X. Compliance with Government-wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

## ATTACHMENTS

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

### I. GENERAL

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

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

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

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

- 2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
  - 4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees or who recommend such action or who are substantially involved in such action, will be made *fully* cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
  - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.
6. Training and Promotion:
- a. The contractor will assist in educating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing IUN journey level status employees in the type of trade or job classification involved.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
  - a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
  - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.
8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
  - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
  - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

- a. The records kept by the contractor shall document the following:
  - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project
  - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

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

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term

"facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

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

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

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

##### 1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof due at time or 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)(8) 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 55(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/wh347\\_instr.htm](http://www.dol.gov/esa/whd/forms/wh347_instr.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 USOOL).

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 55.
- 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.

#### ✓ CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

#### VI SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
  - a. The term \*perform work with its own organization refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
    - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **B..1 VU. 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 (40U.S.C.3704).

#### VUI.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 careerny, 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 its readily available to all persons concerned with the project:

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

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

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

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

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

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

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

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

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

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

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

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

##### 1. Instructions for Certification- First Tier Participants:

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

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

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, It shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions;" provided by the department or contracting agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (Q) 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.

### 3. Instructions for Certification • Lower Tier Participants:

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

- 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 trns clause titled •ertificabn Regarding Debarment , Suspension, Ineligibility and Voluntary Exclusion-lower Tier Covered Transaction,• without modification, in all lower tier covered transactions and in all solicitatons 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 certifiat on is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible lo participate in covered transac tions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each partipant 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 or records in order lo render in good fath 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 ~~thi~~s transaction originated may pursue available remedies, including suspension and/or debarment.

## B..2 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 principas is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federaldepartment or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification,such prospective participant shallattach an explanation to this proposal.

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

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

1. The prospective participant certifies, by signing *and* submitting this bd or proposal,lo

the best of ~~is~~ or her knowledge and beffer, 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.

**B..2.1 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.

#### V. SUPPLEMENTAL EEO REQUIREMENTS

Incorporated in this Contract are three (3) supplemental requirements on Equal Employment Opportunity ("EEO"). These are as follows:

- (1) Specific EEO Responsibilities (23 USC 140 and 23 CFR 230);
  - (2) Notice of Requirements for Affirmative Action to Ensure EEO (Executive Order 11246);
  - (3) Standard Federal EEO Construction Contract Specifications (Executive Order 11246).
- 1) Specific EEO Responsibilities (23 USC 140 and 23 CFR 230)

The Contractor shall work with the Federal Government and the NMDOT in carrying out EEO obligations and in their review of the Contractor activities under this NTC or the Contract.

The Contractor and all Subcontractors at all lower tiers holding subcontracts not including material Suppliers, of \$10,000 or more, shall comply with the following minimum requirements of EEO. The EEO requirements of Executive Order 11246 as amended, as set forth in Volume 6, Chapter 4. Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, 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 is necessary to make them binding on the Subcontractor.

## 2) Notice of Requirement for Affirmative Action to Ensure EEO (Executive Order 11246)

This NTC shall be applicable in all Bids on all Federal-Aid construction Contracts or subcontracts in excess of \$10,000.

The goals and timetables for minority and female participation are measured according to the Standard Metropolitan Statistical Area (SMSA) and expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Work in the geographical area.

As used in this NTC the "geographical area" means the area described in the Invitation for Bid for this Contract and are as follows:

Goals for female participation in each trade:

**B..3**           6  
.9%

Goals for minority participation for each trade:

38.3% - (SMSA Counties: Bernalillo and Sandoval)

45.9% - (Non SMSA Counties: Catron Colfax, De Baca, Guadalupe, Lincoln, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Valencia and Cibola.)

49% - (Non SMSA Counties: Chaves, Dona Ana, Eddy, Grant, Hidalgo, Luna, Otero and Sierra.)

19.5% - (Non SMSA Counties: Lea and Roosevelt.)

11% - (Non SMSA Counties: Curry, Harding, Quay and Union.)

Whether the Contract is Federal or federally assisted, the goals are applicable to all the Contractor's Work performed in the counties listed above. If the Contractor performs construction Work in two (2) counties, then the goals established for the county where the Work is actually performed shall apply.

The Contractor shall comply with Executive Order 11246 and the regulations in 41 CFR Part 60-4 et seq. The hours of minority and female employment and training by Project must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a GFE to employ minorities and women. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a

violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total Work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within ten (10) Days of award of *any* construction subcontract in excess of \$10,000 at any tier for construction Work. To notify the Director of OFCCP the Contractor shall use the form correspondence provided by the Office of Equal Opportunity Programs Contractor Compliance Section.

3) Standard Federal EEO Construction Contracts Specifications (Executive Order 11246)

The Executive Order 11246 is available by accessing the link provided and is incorporated here via reference.

<http://www.dol.gov/>

## VI. INDIAN PREFERENCE

The Contractor, or its Subcontractor at any tier, may without violating 41 C.F.R. § 60-1.5 (a) (7), extend a publically announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The word "near" includes all areas where a person seeking employment could reasonably be expected to commute in the course of a work day. Contractors or Subcontractors, at any tier, shall not discriminate among Indians on the basis of religion, sex, tribal affiliation, and the use of such a preference shall not excuse compliance with the remaining EEO provisions of this NTC.

If the Contractor extends an Indian preference, then this NTC requires that Contractors shall afford preference to initial hiring, reassignment, transfer, competitive promotion, reappointment, reinstatement, or any personnel action to fill a vacant position to qualified and enrolled members of federally recognized Indian tribe. The Contractor shall establish a liaison with local tribe employment offices and provide this individual's name and contact information to the Project Manager at the Pre-Construction Conference per Standard Specification Section 1082 "Notice to Proceed and Pre-Construction Conference". The tribe's employment office may then assist the Contractor in identifying qualified and tribally enrolled individuals. Verification of available, qualified and enrolled individuals will be provided to the Contractor by the tribe's employment office.

This Contract preference requirement is an expansion of the provisions of the equal employment opportunity responsibilities for Contractors contained elsewhere in this NTC and the provisions contained under FHWA-1273.

## VII. NMDOT ON THE JOB TRAINING (OJT) PROGRAM

### I. PROGRAM DESCRIPTION

#### B..4 A. Purpose

The New Mexico Department of Transportation (NMOOT) created its On the Job Training Program and Special Provision (OJT Program) to fulfill the Training Special Provision requirements of federal-aid construction contracts included in 23 CFR 230, Appendix B to Subpart A. The purpose of the OJT Program is to address the underrepresentation of minority and female workers in the construction trades through the assignment of OJT goals. To that end, the primary objective of the OJT Program is the training and upgrading of minorities and females to journeyman status on NMOOT federal-aid contracts.

## B. Program Summary

The OJT Program fulfills its objective by:

- 1) fostering long-term relationships between contractors and trainees;
- 2) encouraging contractors to assist trainees in fully attaining journeyman status, and;
- 3) offering contractors abundant flexibility in fulfilling their training obligations. The OJT Program assigns contractors an annual training goal based on past dollar amounts awarded to the contractor as an NMDOT federal-aid prime contractor.

Contractors may assign eligible trainees that are enrolled in an approved training program, as outlined in Section IIA, to any construction project on which the contractor is a prime, including non-NMDOT projects. Contractors may also assign trainees to be trained by subcontractors on any project, so long as the prime contractor retains the primary responsibility for fulfilling its federal-aid training requirements.

Contractors shall make every effort to meet their OJT Program goals by enrolling minority and female trainees (Le. by conducting systematic and direct recruitment through public and private sources likely to yield minority and female trainees) to the extent that such persons are available within a reasonable area of recruitment. When a contractor cannot meet its annual training goal with minorities and females, it is responsible for demonstrating its Good Faith Efforts taken to meet the goal. Examples of what actions constitute Good Faith Efforts are set forth in Section III below. NMDOT will make compliance determinations regarding the OJT Program based upon either attainment of the annual goal or the Good Faith Efforts to meet it.

No employee shall be employed as an apprentice or trainee in any classification in which he or she has successfully completed a training course leading to journeyman status or in which he or she has been employed as a journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employment application or by other suitable means. Regardless of the method used, the contractor's records shall document the findings in each case. Such records shall be available for inspection by authorized representatives of NMDOT and the Federal Highway Administration (FHWA).

The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the approved training program being utilized. When a specific ratio is not provided, the ratio of apprentices and trainees to journeymen expected to be on the contractor's work force during normal operations shall, pursuant to 23 CFR 230.111(c)(10), fall between 1:10 and 1:4.

## C. Annual Training Goal

The NMDOT Office of Equal Opportunity Programs will notify contractors assigned an annual training goal prior to the beginning of the calendar year (January 1 to December 31) within which they must participate. Contractors are assigned an annual training goal based on the dollar amount awarded to the contractor as an NMDOT federal-aid prime contractor during the previous state fiscal year (July 1 through June 30). More specifically, each contractor cumulatively awarded ten million dollars or more as a prime contractor on NMDOT federal-aid projects during the previous state fiscal year is assigned and shall commit to train, certify and advance one trainee to journeyman worker status during and before the expiration of the calendar year. The trainee must begin training during the calendar year within which the contractor must participate and trainee time cannot "roll-over" from one calendar year to another for purposes of meeting the annual goal.

While NMDOT strongly encourages contractors to independently provide on the job training on their projects, only those contractors who have reached the above-mentioned threshold are required to participate in and are bound by the provisions of this OJT Program. When a contractor is not assigned an annual training goal but still utilizes trainees/apprentices on a federal aid project, the contractor will not be reimbursed for training hours under the OJT pay item, but the contractor may pay the trainees/apprentices the wages allowed in the approved training program, which may be less than the minimum pay rate for the classification. The contractor is still required to use an approved training program, register its trainees in the program, pay trainees according to the program, and show trainees on its payrolls as required by FHWA-1273, Sections IV and V.

## II. PROGRAM REQUIREMENTS

### B..5 A. Use of Approved Training Program

NMDOT recognizes four types of contractor based training programs. Those programs are: contractor in-house training programs that have received prior approval from both FHWA and NMDOT; training programs approved in other states subject to proof of approval; the approved Workforce Development Program provided through the Associated Contractors of New Mexico (ACNM); and the New Mexico Department of Workforce Solutions' State Apprenticeship Council programs (e.g. union apprenticeships, if the contract employees are otherwise eligible). If a contractor wants to use a training program other than one of the four mentioned above, the contractor must have the program approved by NMDOT and FHWA prior to commencing work. All training programs must be administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts. NMDOT reserves the right to request documentation that a program fulfills these obligations. Contractors must ensure that each trainee does not exceed the maximum number of training hours required for the completion of the selected training program.

### B. Wage Requirements

Contractors must pay each approved trainee at the appropriate percentage of journeyman's wage rate based on the approved training program and consistent with applicable State and Federal regulations and guidance.

### C. Reporting Requirements

Contractors must submit the following documents to the administrator of the approved training program being utilized, the NMDOT Office of Equal Opportunity Programs, and, for NMDOT federal-aid projects, to the Project Manager:

- 1) Contractors shall complete and submit Form A-2201, Contractor OJT Enrollment Form, within seven business days of the contractor's intent to assign a trainee(s) to a project.
- 2) For NMDOT federal-aid projects, Contractors shall complete and submit form A-2203, OJT Program Labor Classification Request within seven business days of the contractor's intent to assign a trainee(s) to a project.
- 3) Contractors shall complete and submit Form A-2202, OJT Program Monthly Reporting Form, on or before the 10th of each month, reporting on the preceding month.

Contractors shall submit to the NMDOT Office of Equal Opportunity Programs an Annual Summary Report by January 10th of the following calendar year. The report must give an accurate account of all trainee hours; identifying each trainee by name, ethnicity and gender and identifying each project and/or contract and the trainee hours attributed thereto.

Contractors should also note that:

- 1) Monthly reports submitted after January 10th of the following year will not be accepted or considered towards goal attainment for the previous calendar year.
- 2) If a contractor did not attain its annual goal, it must submit, with its Annual Summary Report, documentation of its Good Faith Efforts to attain the goal (see Section III below).

Contractors should only submit paperwork for individuals accepted and enrolled in an approved training program as outlined in Section IIA, and not for individuals participating in other training and/or apprenticeship programs.

#### D. Contractor Participation

The contractor's Equal Employment Opportunity Officer (EEO Officer) shall be responsible for monitoring and administering the trainees' progress. The EEO Officer shall serve as the point of contact for NMDOT representatives regarding information, documentation, and conflict resolution. The contractor shall furnish each trainee a copy of the Training Program and other documentation related to the training program. The contractor shall further make every reasonable effort to provide training that develops skills as required by the training program. The contractor shall furnish to each trainee, upon successful completion of their training program, a certificate showing the type and length of training satisfactorily completed.

#### E. Contractor Reimbursement

Except as otherwise noted below, NMDOT will reimburse the contractor 80 cents per hour of training given an employee on a State or Federal-aid project in accordance with an approved training program. Reimbursements will be made upon submission to and approval by the Project Manager of a request for

change order with the properly completed OJT monthly reporting forms attached. Reimbursement will not be made for a trainee's hours that exceed the maximum number of training hours required for the completion of the selected classification in the training program.

### III. Good Faith Efforts

If a contractor does not or cannot achieve its annual training goal with female or minority trainees, it must produce adequate Good Faith Efforts documentation. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, aggressive, and continuous result-oriented measures. (23 CFR 230.409(9)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise. Whenever a contractor requests NMOOT approval of someone other than a minority or a female for credit towards its annual training goal, the contractor must submit documented evidence of its Good Faith Efforts to fill that position with a minority or female.

NMDOT will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis, and take into account the following:

- Availability of minorities and females for training;
- The potential for effective training;
- Duration of the contract;
- Dollar value of the contract;
- Total nonnal work force that the average bidder could be expected to use
- Geographic location;
- Type of work;
- The need for journey level individuals in the area.

Good Faith Efforts may include, but are not limited to, documentation of efforts to:

- Contact minority and female employees to gain referrals on other minority and female applicants;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain evaluations that monitor efforts made to achieve diversity on federal-aid projects and the contractor's workforce in general (i.e. significant numbers of minorities and females employed on a company wide basis);

NMDOT may reject utilization of non-minority male trainees for credit toward meeting the annual goal if it determines that the contractor failed to make sufficient Good Faith Efforts to hire minorities or female trainees and/or the contractor failed to document or submit evidence of its Good Faith Effort to do so.

## B.6 IV. NMDOT PROGRAM MONITORING

### A. Site Visits

NMDOT may conduct periodic site visits to a contractor's worksite to review OJT Program compliance along with other contract compliance issues related to the project. NMDOT will make every effort to ensure minimal disruption to a contractor's work.

#### B. End of Year Audits and Sanctions for Non-Compliance

NMDOT will perform an end of year audit of each contractor to verify attainment of the annual OJT goal. If a contractor, through its Annual Summary Report, can demonstrate that it attained its annual OJT Program goal or made adequate Good Faith Efforts to do so, then NMDOT will determine that the contractor is in compliance with the OJT Program requirements.

If a contractor has neither attained its goal nor submitted adequate Good Faith Efforts documentation, NMDOT will issue a Show Cause Notice outlining its findings of non-compliance and providing its determination of sanctions attributed thereto. Within thirty (30) days of receiving the Show Cause Notice, the contractor may submit a written response to the Show Cause Notice providing argument and evidence in opposition to the NMDOT findings of non-compliance and/or its determination of sanctions.

If a contractor fails to submit a written response to the Show Cause Notice within the specified period or the written response to the Show Cause Notice does not cause NMDOT to change its findings of non-compliance and/or its determination of sanctions, NMDOT will issue its Final Order to the contractor regarding the non-compliance and assessing sanctions.

Sanctions for non-compliance may include, but are not limited to: liquidated damages, suspension of any payment in whole or in part, termination or cancellation of contracts in whole or in part, and/or suspension or debarment of the contractor.

### VIII. WAGE RATES

In the event of a discrepancy between the minimum wage rates in the Wage Decision of the DWS, and the U.S. Department of Labor Wage Decision applicable as of Project letting, the higher wage rates shall govern.

### IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS

Davis-Bacon and related acts mandate that federally funded projects require weekly certified payrolls must be generated and submitted for all portions or segments of the contract. The New Mexico Department of Workforce Solutions ("DWS") mandates tracking a construction Project's weekly payrolls and the process by which this reporting is accomplished by the Contractor. Knowledge of the DWS rules and procedures is attributed to the Contractor prior to its Bid submission. The latest forms posted in the DWS website, <http://www.dws.state.nm.us>, must be used for submittals. All outdated forms submitted will be rejected by the Department. If rejected, the Contractor Subcontractors will be required to submit the current DWS forms.

The following requirements apply to those Contractors and Subcontractors performing Work subject to this Contract's prevailing wage rates:

The Contractor and Subcontractor(s) at all tiers shall complete an original DWS "Statement of Intent to Pay Prevailing Wages" form prior to starting Work on the Project. The Contractor shall provide a copy of all forms to the Project Manager in accordance with the Standard Specification Section 108.2 "Notice to Proceed and Pre-Construction Conference". For Subcontracts established later on in the Project, the Contractor shall ensure that the Subcontractor's "Statement of Intent to Pay Prevailing Wages" form is submitted to the Project Manager.

Once construction begins, the Contractor shall submit weekly payroll information. The Contractor shall ensure that all Subcontractors at all tiers submit weekly payroll information.

Weekly payroll information shall be submitted as follows:

On all Projects, the Contractor shall submit and shall ensure that Subcontractors submit weekly payroll information into the LCPTracker software program.

- All payrolls for the Project shall be submitted no later than seven (7) Days following the close of the second payroll period.

Prior to release of the Final Payment, the Contractor and Subcontractor(s) at all tiers shall fully comply with Standard Specification Section 109.10.7 "Contractor Submittal of Final Documentation".

The Contractor and Subcontractor(s) at all tiers shall preserve its weekly payroll records in accordance with Standard Specification Section 107.2 Contractor Records.

On solely State funded Projects, the Rules and Regulations under the New Mexico Public Works Minimum Wage Act are, by this reference, made a part of this Contract

On Federally funded Projects, these provisions hereby supplement Paragraph V, Part 2 of the Required Contract Provisions on all Federal Aid Construction Contracts, FHWA-1273.

#### EEO Software Programs

The Contractor and Subcontractors at all tiers Working on federal-aid Projects shall use the following EEO Software Programs to report specific EEO, Labor Compliance and DBE information as required by the Contract and as specified by this NTC. The two software programs are:

- B2GNow software
- LCPTracker software

B2GNow - (Business to Government Now), is a web-based software program used to collect, verify and manage payment information for Contractors and Subcontractors Working on federal-aid Projects. Additionally, the software is used to collect and report DBE participation and utilization on federal-aid Projects. Information related to the use of the software is available at the NMDOT web page referenced in this NTC.

LCPTracker - (Labor Compliance Program Tracker) is a web-based software program used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation for Contractors

and Subcontractors on federal-aid Projects. Information related to the use of the software is available at the NMDOT web page referenced in the NTC.

Use of B2GNow and LCPTracker software programs is required and shall be considered incidental to the Contract. Failure of a Contractor or Subcontractor to use the required software programs to report specific EEO, Labor Compliance and DBE information may result in a "Non-Conformance".

Information on access to the software programs, log-on information, use of the programs, available training, user manuals, etc. can be obtained by accessing the web page referenced in this NTC.

## B..7 X. TITLE VI Assurances Appendix A and Appendix E

### Appendix A of the Title VI Assurances

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

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. . Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by THE Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of the 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment : In all solicitations, either by competitive bidding or negotiation made by the contractor for work ta be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the New Mexico Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a

contractor is in the exclusive possession of another who fails or refuses to furnish this Information, the contractor shall so certify to the New Mexico Department of Transportation (NMDOT), or the Federal Highway Administration, as appropriate. and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance : In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, the New Mexico Department of Transportation (NMDOT) will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending the contract in whole or in part.
  
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the NMDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the NMDOT to enter into any litigation to protect the interests of the NMDOT. In addition, the contractor may request the United States to enter into the litigation to protect the Interests of the United States.

### **C. Appendix E of the Title VI Assurances**

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601). (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (29 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability): and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*),

(prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age

Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act. which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §

47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et seq.*)

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## **NOTICE TO CONTRACTORS**

**April 6, 2009**

### **HELP STOP FRAUD, WASTE & ABUSE**

#### **CALL**

**1-800-671-STOP  
(1-800-671-7867)**

The New Mexico Department of Transportation (NMDOT), Office of Inspector General (OIG), has established the above toll free "Hotline" which is in operation 7 days a week, 24 hours a day.

Anyone with knowledge of an instance of fraud, waste or abuse, or any similar illegal or unethical activity perpetrated by another contractor or employee, NMDOT employee, or other person, which may affect the cost, completion or correct and safe construction of any New Mexico highway project may use this number to report such activity.

The "Hotline" is part of the NMDOT'S continuing effort to ensure that once a project is completed the motoring public can be assured that they are traveling on a safe and sound roadway.

All information will be treated confidentially and caller anonymity will be respected.

#### **The New Mexico Fraud Against Taxpayers Act:**

The New Mexico Fraud Against Taxpayers Act, (44-9-12 NMSA 1978) has been in effect since July 1, 2007 and provides civil penalties for submitting a claim to a state agency based on false, fraudulent or misleading information. The Act also includes a financial incentive for parties with knowledge of such a claim to come forward.

**NOTICE TO CONTRACTORS****November 17, 2003**

Pursuant to Section 13-1-108 NMSA 1978 (1987 Cum. Supp.) you are hereby notified that all bids submitted are to exclude the applicable state gross receipts tax or applicable local option tax. The New Mexico Department of Transportation will pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax will be shown as a separate amount on each billing or request for payment made under the contract.

**NOTICE TO CONTRACTORS  
WAGE RATES**

**January 2, 2015**

You are hereby advised that wherever differences exist between the minimum wage rates shown under Wage Decisions of the Office of the New Mexico Department of Workforce Solutions, Santa Fe, and those shown under U.S. Department of Labor Wage Decision No. NM 15-47 dated January 2, 2015, and any modifications thereto noted in the contract assembly, the higher wage rates shall govern.

General Decision Number: NM150047 01/02/2015 NM47

Superseded General Decision Number: NM20140047

State: New Mexico

Construction Type: Highway

Counties: Bernalillo, Sandoval, Torrance and Valencia  
Counties in New Mexico.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015

\* SUNM2011-001 08/25/2011

	Rates	Fringes
CARPENTER (Including Form Work)		
Bernalillo.....	\$ 13.73	0.44
Sandoval, Torrance, and Valencia.....	\$ 13.70	0.44
CEMENT MASON/CONCRETE FINISHER		
Bernalillo.....	\$ 15.35	0.26
Sandoval, Torrance, and Valencia.....	\$ 15.58	0.26
ELECTRICIAN (Including Traffic Signalization & Installation).....		
	\$ 25.91	9.45
IRONWORKER, REINFORCING.....	\$ 22.61	6.03

LABORER

Common or General		
Bernallilo, Torrance, and		
Valencia.....	\$ 11.82	0.35
Sandoval.....	\$ 11.85	0.35
Traffic Control (Includes		
Flagger and Cone Setter)....	\$ 14.27	0.35

POWER EQUIPMENT OPERATOR:

Backhoe.....	\$ 20.92	3.62
Bobcat/Skid Loader		
Bernallilo.....	\$ 14.73	0.26
Sandoval, Torrance,		
Valencia.....	\$ 14.91	0.26
Broom Sweeper.....	\$ 16.67	1.57
Excavator/Trackhoe.....	\$ 20.10	0.26
Loader (Front End)		
Bernallilo.....	\$ 16.78	0.26
Sandoval, Torrance,		
Valencia.....	\$ 16.59	0.26
Oiler		
Bernalilo, Sandoval,		
Torrance, & Valencia.....	\$ 22.08	8.72
Trencher.....	\$ 15.22	0.26

TRUCK DRIVER

Dump Truck		
Bernallilo.....	\$ 14.46	0.26
Sandoval, Torrance,		
Valencia.....	\$ 14.51	0.26
Water Truck.....	\$ 13.51	1.51

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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)).

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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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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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  
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

**NOTICE TO CONTRACTORS**

**MINIMUM WAGE RATES  
June 24, 1994**

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

In accordance with the rules and regulations under the New Mexico Public Works Minimum Wage Act, all certified payrolls submitted must contain required information as stated on the pertinent information sheet of the Wage Rate Decision issued on said project.

Special reference is made to Item 2G which indicated that the wage rate decision number must be indicated on the certified payroll submission. **THIS WAGE RATE DECISION NUMBER MUST BE INDICATED ON ALL PAYROLL SUBMISSIONS BY THE PRIME CONTRACTOR, SUB-CONTRACTORS AND THEIR TIERS.**

The wage rate decision is an integral part of the project specifications and contracting agencies must insure compliance with this provision before payment is made to the contractor.



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## **D. *Standard Specifications***

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**C.1 Standard Specification**

FOR

LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270RFB# '16/23/B

CITY OF SANTA FE

The New Mexico Department of Transportation Standard Specifications for Highway & Bridge Construction, 2014 Edition, shall govern construction of this project except where revised or amended by the Notice to Contractors, Supplemental General Provisions, and Special Provisions.

The Notice to Contractors, Supplemental General Provisions, and Special Provisions shall govern over the Standard Specifications and are hereby made a part of the Contract Documents. The Notice to Contractors are identified under Section E of this Document. The Supplemental General Provisions and Special Provisions are identified under Section F of this document.

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**E. *Special Provisions for Payroll Not Included Under Section B.4***

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## D.1 Special Provisions For Minimum Wage Rate

This project is subject to the Minimum Wage Rates as determined by the New Mexico Department of Workforce Solutions, Public Works Bureau pursuant to Chapter 13, Section 13-14-11, NMSA 1978 and the U.S. Department of Labor Decision No. NM100003. The Minimum Wage Rates to be paid by the Contractor and any Subcontractors to their employees on this project shall be in accordance with those wages as listed in the New Mexico Department of Workforce Solutions, Public Works Bureau Minimum Wage Rate Decision Number SF 11-1052 A. Copies of the wage rate decision and applicable forms are bound in this section. The Contractor is hereby required to submit all wage decision forms to the City as follows:

- **Subcontractor List & Statement of Intent to Pay Prevailing Wages** – Submit before construction starts
- **Affidavit of Wages Paid** – Submit after construction, but before final payment

Subcontractors shall provide all necessary wage decision forms or information to the prime contractor. The prime contractor shall be responsible for the submission of wage decision forms or information required of all subcontractors to the City. The same timelines stated above apply.

## D.2 Compliance with City of Santa Fe Living Wage Ordinance

The Contractor shall comply with City of Santa Fe Living Wage Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003, including any subsequent changes to the ordinance throughout the term of this contract. See City of Santa Fe Living Wage Ordinance Notice provided in this section.

# City of Santa Fe

## Living Wage Ordinance

*Ordinance Number §28-1 28-1.12 SFCC 1987*

### ***Purpose:***

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wage rates.

### ***Who it affects:***

- All businesses and non-profit organization required to have a business license or business registration issued by the City of Santa Fe.

### ***Compliance:***

- Affected businesses are required to pay employees an hourly wage of \$9.85 effective January 1, 2009.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Non-profit organizations whose primary source of funds is from (Medicaid) waivers are exempt.

### ***Prohibitions against retaliation and circumvention:***

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within sixty days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

### ***Enforcement; Remedies:***

- **Administrative Enforcement** - The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- **Criminal Penalty** - A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for Each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to which any such violation occurred.
- **Other remedies** - The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the Payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

***Nonexclusive Remedies and Penalties - The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.***

### ***Posting and Publication:***

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

***For further information, please contact the office of: Constituent Services at (505) 955-6949 or by Email at:constituentservices@santafemn.gov***

# Municipalidad de Santa Fe

## Ordenanza Respecto al Sueldo Mínimo

*Ordenanza Numero §28-1 28-1.12 SFCC 1987*

### **Propósito:**

La ordenanza respecto al Sueldo Mínimo fue adoptada por la Ciudad de Santa Fe con el fin de establecer un sueldo mínimo que determinadas empresas tienen que pagar.

### **A Quién Afecta la Ordenanza:**

- A toda empresa con o sin fines de lucro que por ley deba tener una licencia o un registro comercial emitido por la Ciudad de Santa Fe.

### **Cómo Se Tiene que Cumplir lo que Dispone la Ordenanza:**

- A partir del día primero de enero del 2009, las empresas que tienen que pagar el sueldo mínimo tienen la obligación de pagar un sueldo de \$9.85 la hora.
- A partir del día primero de enero del 2009, y cada año que sigue, el sueldo mínimo será ajustado de acuerdo con la inflación.
- Para trabajadores/as que regularmente reciben propinas o comisiones que sumen más de \$100 por mes, todas esas propinas o comisiones en contra de la ley contarán como si fueran sueldo y serán acreditadas para satisfacer la ordenanza, siempre y cuando los trabajadores se queden con todas sus propinas. También se permitirá acreditar propinas que se junten y se compartan.
- El valor de beneficios de seguro médico y de cuidado de niños se considerará como parte del sueldo mínimo.
- Las organizaciones sin fines de lucro que reciben la mayoría de sus fondos de (*Medicaid*) no tienen que pagar el sueldo mínimo de la ciudad.

### **Se Prohíben Represalias o Evasiones:**

- Es en contra de la ley que una empresa o persona que emplea trabajadores o que el apoderado o persona que representa a la empresa tome represalias en contra del trabajador porque el o ella ejerce sus derechos o comunica sus derechos a otra persona. También es en contra de la ley tomar represalias contra un trabajador que erróneamente, pero de buena fe, alega que la empresa no ha cumplido con la ordenanza.
- Se presume como represalia, tomar cualquier acción dentro de los 60 días después de que un individuo quiso ejercer sus derechos.
- Es en contra de la ley que un empresario o empleador intencionalmente trate de evadir los requisitos de esta ordenanza con tratando parte de su negocio a otra empresa o rentando partes de su propiedad, con el fin de no cumplir con la ordenanza.

### **Remedios Legales Para Implementar la Ley:**

- **Medidas Administrativas** - El Administrador de la ciudad o su representante está autorizado a hacer cumplir la ordenanza hasta donde los recursos lo permitan.
- **Castigo Judicial** - El empleador que no cumpla con esta ordenanza será condenado por cada infracción. Podría estar sujeto a multas o encarcelamiento según dispone la sección 1-3 del Código Civil de Santa Fe de 1987. El empleador que no cumpla cualquiera de los requisitos en esta ordenanza será culpable de una infracción por cada trabajador afectado, por cada día o parte del día que no se cumpla la ordenanza.
- **Otros Recursos Judiciales** - La Ciudad de Santa Fe, cualquier individuo o cualquier grupo de individuos que han sido afectados porque no se cumplió la ordenanza, podrán presentar una queja en la corte civil que tiene jurisdicción para restringir, corregir, suprimir, o remediar toda infracción de esta ordenanza. La persona que gane el caso tiene derecho a un remedio legal o equitativo que sea adecuado para remediar la violación. Los remedios incluyen y sin limitar, que lo/la vuelvan a emplear, que le paguen el sueldo que le deben más una cantidad por daños determinados que son el igual a doble cantidad del sueldo que le deben, protección judicial y cuotas razonables que cobra el abogado más costos del caso.

**Remedios Legales, Daños y Perjuicios No Exclusivos** Los remedios legales en esta sección no son exclusivos. Eso quiere decir que esta ordenanza no prohíbe que el trabajador trate de plantear otros remedios en la corte, demandar por daños y perjuicios que la ley permite.

### **Colocación de Anuncios y Publicación de los Anuncios:**

- Como condición para obtener y mantener una licencia o registro comercial toda empresa tendrá que colocar en un lugar prominente al lado de su licencia o registro en el lugar de trabajo este aviso en inglés y en español indicando que el negocio está cumpliendo con la ordenanza y con el texto de este aviso. Si la empresa no cumple lo que esta sección ordena se considerará como violación a esta ordenanza y se podrá suspender, revocar o dar por terminada la licencia o registro de la empresa.

**Para obtener más información, favor de comunicarse con la oficina de: Constituent Services al número (505) 955-6949 o por Correo electrónico a: constituentervices@santafem.gov.**

### **D.3 Special Provisions For Submission of Weekly Payrolls**

#### **WAGE RATE DECISION**

Contractors are hereby advised that this project is subject to the New Mexico Department of Workforce Solutions, Public Works Bureau Wage Rate decision Number SF 11-1052 A.

#### **SUBMISSION OF WEEKLY PAYROLLS**

All Contractors and subcontractors shall submit one (1) certified copy of the project weekly payroll to the City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504, C/O, Rick Devine, Project Engineer, no later than five (5) working days after the close of each payroll period. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. All Contractors and subcontractors must have copies of certified payrolls available to the New Mexico Department of Workforce Solutions, Public Works Bureau within ten (10) days of a written request, if required.

## **D.4 State Wage Decision**

SUSANA MARTINEZ  
GOVERNOR



CELINA BUSSEY  
SECRETARY

JOHN SANCHEZ  
LT. GOVERNOR

STATE OF NEW MEXICO  
DEPARTMENT OF WORKFORCE SOLUTIONS  
625 Silver Ave SW Suite 410  
Albuquerque, NM 87102  
Telephone (505) 841-4405  
Fax (505) 841-4420

## **PUBLIC WORKS PROJECT REQUIREMENTS**

As a participant in a Public Works project valued at more than \$60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are assigned by statute to each project stakeholder.

### **Contracting Agency**

- Ensure that all contractors/prime contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Labor Relations Division, Labor Enforcement Fund (LEF) prior to bidding.
- Provide completed Notice of Award (NOA) and Sub-Contractor list to Labor Relations Division promptly after the project is awarded.
- Provide updates to the Sub-Contractor list to the Labor Relations Division

### **General Contractor**

- Provide to the Contracting Agency within 3 (Three) days of award a complete sub-contractor list and Statements of Intent (SOI) to pay Prevailing Wages for each contractor.
- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the owner/contracting agency.
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.
- Confirm the Wage Rate poster, provided by the Labor Relations Division, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) is sent to the Contracting Agency.

### **Sub-Contractor**

- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the General Contractor(s).
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.

"AN EQUAL OPPORTUNITY EMPLOYER"

### **Additional Information**

Reference material and forms for these requirements are available through the following New Mexico Workforce Solutions Web Link.

[www.dws.state.nm.us/new/Labor\\_Relations/publicworks.html](http://www.dws.state.nm.us/new/Labor_Relations/publicworks.html).

### **Additional Information**

Additional information, requirements, and documents on these topics can be found through the Public Works web pages.

- Labor Enforcement Fund (LEF)
- Weekly Certified Payroll
- Public Works Apprenticeship and Training Fund (PWAT)
- Forms: Statement of Intent (SOI), Affidavit of Wages Paid (AWP)
- Prevailing Wage Rates (Base Rates, Fringe, and Apprenticeship Contributions)

### **CONTACT INFORMATION**

Contact us for any questions relating to Public Works Projects.

Kim Kew at [kim.kew@state.nm.us](mailto:kim.kew@state.nm.us) or 505-841-4405  
Otis Caddy [LynnO.Caddy@state.nm.us](mailto:LynnO.Caddy@state.nm.us) 505-841-4406  
Stacey Lowrey [Stacey.Lowrey@state.nm.us](mailto:Stacey.Lowrey@state.nm.us) 505-841-4412

New Mexico Department of Workforce Solutions  
Public Works

121 Tijeras Ave. NE, Suite 3000, Albuquerque, NM 87102  
Phone: (505)-841-4400 fax to: (505) 841-4424 or Email to: [public.works@state.nm.us](mailto:public.works@state.nm.us)

**Wage Decision # SF-15-1750 A**

**NOTIFICATION OF AWARD (NOA)**

**THIS WAGE DECISION # EXPIRES FOR BIDS ON**

**03/24/16**

**Description and Location of Work:** LED Pedestrian Signal Installation  
Remove & dispose of existing pedestrian signal heads and install new LED countdown pedestrian signal heads at signalized intersections in the City of Santa Fe. Work includes all labor and materials to install countdown pedestrian signal heads at Santa Fe traffic signals

City of Santa Fe

County of Santa Fe

Signalized intersections in Santa Fe

**REMINDER for Agency Conducting BID Process:**

After the Contracting Agency awards this project the Wage Rate Poster, Sub-List and the Project Requirement Document, excluding this NOA must be delivered to the **GENERAL/PRIME CONTRACTOR**. The Contracting Agency or its agent must complete this form and submit with the sub-list listing all of the subcontractors including all tiers of subcontractors and fax or email it to the address above. **If the project is canceled**, this form must be completed by the Contracting agency conducting the bid process and the wording "Cancelled" written on the form and send to the Labor Relations Division. Failure to submit the NOA in a timely manner is a violation of paragraph 11.1.2.9.B (3) of the Public Works Minimum Wage Act Policy Manual.

General/Prime Contractor Company  
Name: \_\_\_\_\_ License#: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

Project Contact's name: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Approximate Date Work to  
Start: \_\_\_\_\_

Estimated Completion  
Date: \_\_\_\_\_

Estimated \_\_\_\_\_ Cost \_\_\_\_\_ of  
Project: \_\_\_\_\_

—

Bid \_\_\_\_\_ Opening  
Date: \_\_\_\_\_

\_\_\_\_\_

Note: The General/Prime Contractor **MUST** mail/fax in their Statement of Intent to Pay Prevailing Wages to the Contracting Agency or its agent before beginning work on the project. Each Subcontractor (and all tiers of subcontractors) **MUST** also mail/fax their Statement of Intent to Pay Prevailing Wages to the General/Prime Contractor 3 days after award of project. After work on the project is completed **and before, final payment**, is made to subcontractors and all tiers of subcontractors, the contractor and sub-contractors must mail/fax their Affidavit of Wages paid to the Contracting Agency for final payment.

*Signature for Contracting Agency (or agent)*

\_\_\_\_\_

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

**Email address for Contracting Agency (not agent)** \_\_\_\_\_ **Required Field**

*Date* \_\_\_\_\_

8/29/13

### SUBCONTRACTOR LIST

**DO NOT** list suppliers or professional services (such as surveyors)  
**INCLUDE** individual subcontractor dollar amount for project  
Email to: public.works@state.nm.us or fax to: (505) 841-4424

Please include 2nd & 3rd Tier subcontractors. Make extra copies of form if necessary.

Wage Decision. # **SF-15-1750 A**

#### General Contractor:

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER  
 \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)  
 Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_  
 Amount (\$): \_\_\_\_\_

---

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER  
 \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)  
 Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_  
 Amount (\$): \_\_\_\_\_

---

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>ne</sup> TIER  
\_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)

Work to be performed:  
Amount (\$):

Start Date:

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER  
\_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)

Work to be performed:  
Amount (\$):

Start Date:

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER  
\_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)

Work to be performed:  
Amount (\$):

Start Date:

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>ne</sup> TIER  
\_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_

(To Whom)

(To Whom)

Work to be performed:  
Amount (\$):

Start Date:

**LED Pedestrian Signal Installation: Wage Decision #SF-15-1750 A**

Remove & dispose of existing pedestrian signal heads and install new LED countdown pedestrian signal heads at signalized intersections in the City of Santa Fe. Work includes all labor and materials to install countdown pedestrian signal heads at Santa Fe traffic signals

TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective September 24, 2015

<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>
Bricklayer/Blocklayer/Stonemason	23.32	8.04
Carpenter/Lather	23.40	9.02
Cement Mason	17.11	6.32
Ironworker	26.12	14.02
Painter (Brush/Roller/Spray)	16.00	5.58
<b>Electricians (outside)</b>		
Groundman	21.28	10.53
Equipment Operator	30.54	12.94
Lineman/Wireman or Tech	35.94	14.34
Cable Splicer	39.52	15.28
Plumber/Pipefitter	28.30	4.07
<b>Laborers</b>		
Group I	12.20	5.30
Group II	12.50	5.30
Group III	12.90	5.30
<b>Operators</b>		
Group I	16.69	6.16
Group II	17.44	6.16
Group III	17.55	6.16
Group IV	17.63	6.16
Group V	17.75	6.16
Group VI	17.89	6.16

Group VII	18.27	6.16
Group VIII	18.50	6.16
Group IX	25.45	6.16
Group X	28.35	6.16
<b>Truck Drivers</b>		
Group I	13.32	0.26
Group II	13.52	0.26
Group III	13.72	0.26
Group IV	13.92	0.26

**NOTE: SUBSISTENCE, ZONE AND INCENTIVE PAY APPLY ACCORDING TO THE PARTICULAR TRADES COLLECTIVE BARGAINING AGREEMENT. DETAILS ARE LOCATED AT [WWW.DWS.STATE.NM.US](http://WWW.DWS.STATE.NM.US).**

**LABOR ENFORCEMENT FUND**  
***(STRICTLY ENFORCED)***

**13-4-13.1 Public works contracts; registration of contractors and subcontractors.**

- A. Except as otherwise provided in this subsection, in order to submit a bid valued at more than sixty thousand dollars (\$60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the division. Bidding documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection. The provisions of this section do not apply to vocational classes in public schools or public post-secondary educational institutions.
- B. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof or required registration for itself.
- C. Contractors and subcontractors may register with the division on a form provided by the division and in accordance with workforce solutions department rules. The division shall charge an annual registration fee of two hundred dollars (\$200). The division shall issue to the applicant a certificate of registration within fifteen days after receiving from the applicant the completed registration form and the registration fee.
- D. Registration fees collected by the division shall be deposited in the labor enforcement fund.

**13-4-14.1 Labor enforcement fund; creation; use.**

The "labor enforcement fund" is created in the state treasury. The fund shall consist of contractor and subcontractor registration fees collected by the labor and industrial division of the labor department and all investment and interest income from the fund. The fund shall be administered by the division, and money in the fund is appropriated to the division for administration and enforcement of the Public Works Minimum Wage Act [13-4-10 NMSA 1978]. Money in the fund shall not revert to the general fund at the end of a fiscal year.

**13-4-14.2 Registration cancellation, revocation, suspension; injunctive relief.**

The director may:

- A. cancel, revoke or suspend with conditions, including probation, the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act [13-4-10 NMSA 1978] for failure to comply with the registration provisions or for good cause, subject to appeal pursuant to Section 13-4-15 NMSA 1978; and
- B. seek injunctive relief in district court for failure to comply with the registration provisions of the Public Works Minimum Wage Act.



**STATEMENT OF INTENT TO PAY PREVAILING WAGES**

To Be Filed Before Construction Starts

Incomplete forms will be returned without approval.

Mail, email, or Fax to Public Works Bureau, 625 Silver Ave SW, Ste 410, Albuquerque, NM 87102

Email: [public.works@state.nm.us](mailto:public.works@state.nm.us) Call Patricia Barela (505) 841-4409 Fax: (505) 841-4423

**GENERAL CONTRACTOR INFORMATION**



Company Name:		
Address:		
City:	State:	Zip:
Phone:	Fax:	
Estimated Start Date:	<b>State Wage Dec. #:</b>	
Project Title:		
Project Physical Address:		
PRINT NAME:	Contract Amount:	
SIGNATURE:	Estimated Completion Date:	

<b>Subcontractor</b>	Start Date of work on this project:
Company Name:	Contract Amt.:
Address:	Zip:
City:	State:
Phone:	Fax:
PRINT NAME:	SIGNATURE:

<b>2ND. TIER SUB: (Who is paying you? Fill in name above)</b>	Start date of work on this project:
Company Name:	Contract Amt.:
Address:	Zip:
City:	State:
Phone:	Fax:
Printed name:	SIGNATURE:

I hereby certify that the above information is correct and that all workers I employ on this public works project were paid no less than the Prevailing Wage Rate(s) as determined by the Department of Workforce Solutions, Public Works Bureau for this project as identified by the State Wage Decision No. I understand that contractors who violate Prevailing Wage Laws (i.e., incorrect job classification, improper payment of prevailing wages, and/or overtime, etc.), are subject to debarment procedures and shall be required to pay any back wages due to workers. (Ref. LID Public Works Minimum Wage Act Policy Manual (11.1.2 NMAC) & Public Minimum Wage Act (13-4-11 through 13-4-18, NMSA 78)).

**LID Approval of this Form** **Date**

NOTE: After 7/01/09, ALL tiers of contractors with contracts over \$60,000, MUST be registered with the Department of Workforce Solutions, Public Works Bureau. The registration form is available on our web page at [www.dws.state.nm.us](http://www.dws.state.nm.us) under Public Works and Additional Forms. Fill in the Labor Enforcement Fund form and mail to the post office box listed at the top of the form. Go to the same page that the form is on to check the list of Registered Contractors.

(See IMPORTANT information on back!)

Revised 04/26/11

*INSTRUCTIONS FOR FILLING OUT STATEMENT OF INTENT***FOR GENERAL CONTRACTOR:**

1. Fill in general contractor information and provide signature.
2. State Wage Dec. No. as listed in bid documents. (example: BE-07-0123 B)
3. Project Title - Listed in bid documents. Whatever the project is.
4. Project Physical Address - Exact location of project (job site).
5. Estimated Start and Completion Date of Project
6. General Contractor's Contract Amount – Project cost.

**FOR SUBCONTRACTOR:**

1. Fill in general contractor information, but general contractor signature is not needed.
2. Fill in subcontractor section as indicated and provide signature. Send to GC. Sub-contract amount – list subcontract amount.  
PLEASE NOTE: A SEPARATE SIGNED FORM IS NEEDED FOR EACH CONTRACTOR

**FOR 2ND TIER SUB:**

1. Fill in general contractor information, but general contractor signature is not needed.
2. Fill in subcontractor section; subcontractor signature not needed. Send to GC.
3. Fill in 2nd. Tier sub section and provide signature.
4. 2<sup>nd</sup> Tier contract amount – list amount.

**For 3<sup>rd</sup> TIER & HIGHER:** Attach a copy of this completed form & list the 3<sup>rd</sup> tier contractor info under the 2<sup>nd</sup> tier contractor with a note.

**Effective July 1, 2009 - ALL contractors bidding on public works contracts for \$60,000 or more MUST be registered with the Labor & Industrial Division prior to bidding the project. The registration form may be found on the DWS web page at [www.dws.state.nm.us](http://www.dws.state.nm.us) under Public Works and Forms. Print the Labor Enforcement Fund Form and mail it along with a check for \$200 to the address at the top of the form. A list of registered contractors may be reviewed on the same page as the registration form. Registration is good for one year, and after registration, contractors may bid as many contracts as they want. Upon expiration of the registration, contractors may complete projects, but in order to bid new ones after the expiration, they must register again. NOTE: All Affidavits of Wages Paid must go to the GC to submit to the Department of Workforce Solutions for approval. DWS will return approved Affidavits to the GC who should forward them to the subs.**

**NOTE: If form is faxed, or emailed, originals are not required to be sent, unless the fax is illegible.**

**AFFIDAVIT OF WAGES PAID**

To Be Filed **After** Construction Is Complete

Please type or print in ink. Incomplete forms will be returned without approval.

Mail, email, or fax to Public Works Bureau, 625 Silver Ave SW, Ste 410, Albuquerque, NM 87102

Email: [public.works@state.nm.us](mailto:public.works@state.nm.us) Call (505) 841-4409 Fax: (505) 841-4423

<b>GENERAL CONTRACTOR INFORMATION</b>		
Company Name:		
Address:		
City:	State:	Zip:
Phone:	Fax:	
Completion Date:	<b>State Wage Dec. #:</b>	
Project Title:		
Project Physical Address:		
PRINT NAME:		
SIGNATURE:		
<b>Subcontractor</b>		Date you completed work on this project
Company Name:		DATE:
Address:		
City:	State:	Zip:
Phone:	Fax:	
PRINT NAME:	SIGNATURE:	
<b>2ND. TIER SUB: (Who is paying you? Fill in name above)</b>		Date you completed work on this project
Company Name:		DATE:
Address:		
City:	State:	Zip:
Phone:	Fax:	
Printed name:	SIGNATURE:	
<p>I hereby certify that the above information is correct and that all workers I employ on this public works project were paid no less than the Prevailing Wage Rate(s) as determined by the Department of Workforce Solutions, Public Works Bureau for this project as identified by the State Wage Decision No. I understand that contractors who violate Prevailing Wage Laws (i.e., incorrect job classification, improper payment of prevailing wages, and/or overtime, etc.), are subject to debarment procedures and shall be required to pay any back wages due to workers. (Ref. LID Public Works Minimum Wage Act Policy Manual (11.1.2 NMAC) &amp; Public Minimum Wage Act (13-4-11 through 13-4-18, NMSA 78)).</p>		
<b>LID Approval of this Form</b>		<b>Date</b>
<p>NOTE: After 7/01/09, ALL tiers of contractors with contracts over \$60,000, MUST be registered with the Department of Workforce Solutions, Public Works Bureau. The registration form is available on our web page at <a href="http://www.dws.state.nm.us">www.dws.state.nm.us</a> under Public Works and Additional Forms. Fill in the Labor Enforcement Fund form and mail to the post office box listed at the top of the form. Go to the same page that the form is on to check the list of Registered Contractors.</p>		
<b>(See IMPORTANT information on back!)</b>		Revised 04/26/11

*INSTRUCTIONS FOR FILLING OUT AFFIDAVIT OF WAGES PAID*FOR GENERAL CONTRACTOR:

1. Fill in general contractor information and provide signature.
2. State Wage Dec. No. as listed in bid documents. (example: BE-07-0123 B)
3. Project Title - Listed in bid documents. Whatever the project is.
4. Project Physical Address - Exact location of project (job site).
5. Completion Date of Project

FOR SUBCONTRACTOR:

1. Fill in general contractor information, but general contractor signature is not needed.
2. Fill in subcontractor section as indicated and provide signature. Send to GC.  
PLEASE NOTE: A SEPARATE SIGNED FORM IS NEEDED FOR EACH CONTRACTOR

FOR 2ND. TIER SUB:

1. Fill in general contractor information, but general contractor signature is not needed.
2. Fill in subcontractor section; subcontractor signature not needed. Send to GC.
3. Fill in 2nd. Tier sub section and provide signature.
4. 2<sup>nd</sup> Tier contract amount – list amount.

For 3<sup>rd</sup> TIER & HIGHER: Attach a copy of this completed form & list the 3<sup>rd</sup> tier contractor info under the 2<sup>nd</sup> tier contractor with a note.

**Effective July 1, 2009 - ALL contractors bidding on public works contracts for \$60,000 or more MUST be registered with the Labor & Industrial Division prior to bidding the project. The registration form may be found on the DWS web page at [www.dws.state.nm.us](http://www.dws.state.nm.us) under Public Works and Forms. Print the Labor Enforcement Fund Form and mail it along with a check for \$200 to the address at the top of the form. A list of registered contractors may be reviewed on the same page as the registration form. Registration is good for one year, and after registration, contractors may bid as many contracts as they want. Upon expiration of the registration, contractors may complete projects, but in order to bid new ones after the expiration, they must register again. NOTE: All Affidavits of Wages Paid must go to the GC to submit to the Department of Workforce Solutions for approval. DWS will return approved Affidavits to the GC who should forward them to the subs.**

**NOTE: If form is faxed, or emailed originals are not required to be sent, unless the fax is illegible.**

SUSANA MARTINEZ  
GOVERNOR



CELINA BUSSEY  
SECRETARY

JOHN SANCHEZ  
LT. GOVERNOR

STATE OF NEW MEXICO  
DEPARTMENT OF WORKFORCE SOLUTIONS  
Public Works Bureau  
625 Silver Ave SW, Suite 410  
Albuquerque, NM 87102  
(505) 222-4669 / FAX (505) 222-4780

GEORGE MARQUEZ  
DIRECTOR

## **NOTICE**

### **Public Works Apprenticeship and Training Act**

Statute 13-4D-4.B states:

“Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, shall not be constructed unless an employer agrees to make contributions to approved apprentice and training programs in New Mexico in which the employer is a participant or to the public works apprentice and training fund administered by the public works bureau of the labor and industrial division of the labor department. Contributions shall be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the director.”

For a copy of the above-mentioned act, please contact our office at (505) 841-4403.

For contractors that are not participants in an approved apprenticeship program, submit Apprenticeship & Training Contribution Compliance Statement and Payment to:

NMDWS  
Public Works Bureau  
PO Box 27428  
Albuquerque, NM 87125-7428

# ***APPRENTICESHIP CONTRIBUTION PROGRAM***

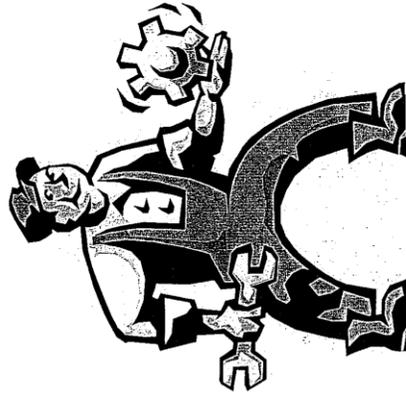
The following are easy reminders regarding this program:

1. For "B", "C", & "H" Projects: Whenever you have any workers on the job (even if you are not using apprentices), you are required to pay into the Apprenticeship Training Program as outlined in the Apprenticeship & Training Act. This applies to all contractors, subcontractors, 2<sup>nd</sup> tiers, etc. Your wage rates will show which jobs have apprenticeship contributions.
2. If you have apprentices on the job, they must have a journeyman working with them. The ratio must be one-to-one.
3. The Apprenticeship Contribution is not considered part of the fringe benefits. It is totally separate.
4. The Apprenticeship Compliance Statement from our office (or our website) is the only form you may use. Do NOT modify our form or generate your own.
5. As noted on the Apprenticeship Compliance Statement, these forms are due on the 15<sup>th</sup> of every month for the length of the project. If no work was done for that month, send us a copy letting us know there was no work done.
6. Submit Apprenticeship Compliance Statements with payments to: NMDWS, Public Works Bureau, PO Box 27428, Albuquerque, NM 87125-7428

*New Mexico Department of Workforce Solutions - Public Works Bureau  
625 Silver Ave SW, Suite 410 - Albuquerque, NM 87102  
Phone: (505) 841-4408 Fax: (505) 841-4423*

# New Mexico Public Works

# Construction



CHECK OUT THE  
DEPARTMENT OF  
WORKFORCE SOLUTIONS  
WEBSITE FOR VALUABLE  
INFORMATION

[www.dws.state.nm.us](http://www.dws.state.nm.us)

Click on "Public Works"

~ OR ~

**PHONE:**

**Public Works Questions:**

Patricia -- (505) 841-4409

Lori -- (505) 841-4408

Nicolina -- (505) 841 - 4403

Michael - (505) 841- 8995

**FAX Number:**

(505) 841- 4423

**Apprenticeship Questions:**

(505) 841- 4403



**Susana Martinez  
Governor**

**Celina Bussey  
Department of Workforce  
Solutions  
Secretary**

The NM Public Works Minimum Wage Act applies to employers and employees working on state/locally funded public works construction jobs. Information here is not an official interpretation of the Act, but this pamphlet can serve as a general guide to the law. You may find additional information and Rules & Regulations derived from the Act on the NMDWS web page at [www.dws.state.nm.us](http://www.dws.state.nm.us)

### 1. How does the Act apply?

The Act and the Public Works Bureau's Policy Manual govern all public works (PW) construction projects costing more than \$60,000 and funded in part or in whole by state/local funds. Wages set by LID must be paid as a minimum. Employees must be paid weekly. If the project has federal funding as well, the pay is figured by comparing the total rate in each trade from the state and federal wage decisions and paying the higher of the two.

### 2. What is a Wage Decision?

A wage decision is the set of wage rates for a specific public works construction project. The person putting together project bid documents requests a wage decision by submitting a request on our website that describes the scope of work. The type of work determines the type of rates issued. The four sets of rates are for:

"A" – Street, Highway, Utility and Light Engineering;

"B" – General Building;

"C" – Residential; and

"H" – Heavy Engineering.

If 80% of the project is *not* in one type of construction, two or more types of rates may be issued. A wage decision expires when new wage rates are approved – unless the bid opening takes place, or is within 10 days of taking place. When the bids are opened before the expiration, those rates are good for the life of the project.

### 3. When is a new Wage Decision required?

A new wage decision is required when the bids are not opened within 10 days after the approval of new wage rates. Then both a new wage decision and new rates will apply.

### 4. What is sent along with a Wage Decision?

Several forms are sent out with the wage decision that must be used by contractors:

- a. A Notification of Award must be sent to the Public Works Bureau from the contracting agency or general contractor listing all subcontractors before work starts;
- b. A Statement of Intent to Pay Prevailing Wages must be sent to the contracting agency from each contractor, subcontractor and second tier contractor before work starts;
- c. An Apprenticeship Contribution Compliance Statement (for all except Type "A" projects) is due by the 15<sup>th</sup> of each month from all contractors,

subcontractors, and second tier contractors;

d. A wage rate poster must be displayed in an easily accessible place at the job site to show all employees what their minimum rates of pay are; and

e. An Affidavit of Wages Paid must be submitted to the contracting agency after a contractor finishes work but before the final payment.

### 5. When does overtime pay start?

Overtime pay starts after 40 hours of work in a seven-day workweek for the same employer, regardless of how many projects the employee works on.

### 6. How is overtime pay computed?

Overtime pay is 1.5 times the base pay with fringes added back. For example, if the base is \$12/hr. and the fringe benefit is \$2/hr., the total overtime rate is  $12 \times 1.5 + 2$  or  $18 + 2 = 20$ .

### 7. How can I file a wage claim?

If you think your employer owes you more wages, you may file a wage claim at any NMDWS office, or call our Hotline at 1-888-370-0013. You should keep copies of pay stubs, a diary of when and where you worked, and the work performed.

### 8. What does the term "at will State" mean?

New Mexico is an "at will State" and the term means that an employer may hire and fire employees at will.

**PAYROLL STATEMENT OF COMPLIANCE**

Wage Decision No.: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ do hereby state:  
 (Name of Signatory Party) (Title)  
 (1) that I pay or supervise the payment of the persons employed by: \_\_\_\_\_  
 (Contractor or Subcontractor)

on the \_\_\_\_\_  
 (Name of Project)  
 that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and ending the  
 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, all persons employed on said project have been paid the full weekly  
 wages earned, that no deductions have been or will be made either directly or indirectly to or on behalf of said  
 \_\_\_\_\_ from the full weekly wages earned by any  
 (Contractor or Subcontractor)

- person, other than deductions permitted by law. Anyone found in violation of the NM Public Works Minimum Wage Act [13-4-11 to 13-4-17 NMSA 1978] could be subject to penalties and debarment.
- (2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborer or mechanic conform with the work he performed.
  - (3) That any apprentice(s) employed in the above period are duly registered in a bona fide apprenticeship program registered with the State Apprenticeship agency recognized by the Bureau of Apprenticeship & Trng., US Dept. of Labor, or properly enrolled in a bona fide training program approved for application on public works construction projects by the appropriate state (SAC) and/or federal agency(ies) (BAT) if and as required by law & applicable federal regulation.
  - (4) FRINGE BENEFITS: (Please Spell Out Any/All Acronyms)

\_\_\_(a) ARE PAID TO APPROVED PLAN, FUND, OR PROGRAM in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above-referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate program for the benefit of such employees.

If paid to an approved plan, fund, or program, please fill out name of program w/fringe breakdown per hour below:

Name of Program Used for Fringe Benefits:				
Pension =	Health/Welfare =	Holiday/Vac. =	Life Ins. =	Training* =
(If additional space is needed for more programs/fringe breakdowns, please attach a separate page.)				

- FRINGE BENEFITS:**
1. Pension
  2. Health/Welfare
  3. Holiday/Vacation
  4. Life Insurance
  5. Training (not Apprenticeship) \*

**FRINGE BREAKDOWN SAMPLE:**

Fringe Benefit	Amount
401(K) Plan	\$8.98/hr
Vacation	\$2.23/hr

- \_\_\_(b) **Paid to Union Program** - If paid to a Union and fringe benefits differ from employee to employee, and/or job contract, please provide fringe breakdown for each employee and attach copy of Union contract.
- \_\_\_(c) ARE PAID IN CASH, each laborer or mechanic listed in the above-referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract.

Section 13-1D-1 to Section 13-1D-8, NMSA 1978 provides for employers to agree to make contributions to approved apprentice & training programs in New Mexico in which the employer is a participant to the public works apprentice and training fund administered by the Public Works Bureau of the Labor & Industrial Division of the New Mexico State Department of Labor. Contributions shall be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the Labor & Industrial Division Director.

**APPRENTICESHIP CONTRIBUTIONS:** (Please check applicable blank)  
 \_\_\_ Check paid to: NM Public Works Apprenticeship & Training Fund - Public Works Bureau, Labor & Industrial Div.  
 \_\_\_ Check paid to: \_\_\_\_\_ (Program No.)  
 (Name & address of approved Apprenticeship & Training Program)

Print Name of Certifying Official: \_\_\_\_\_ Signature of Certifying Official: \_\_\_\_\_ Title & Phone No.: \_\_\_\_\_ Date: \_\_\_\_\_

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.  
 Revised April/2006

New Mexico Department of Workforce Solutions – Public Works Section  
 P.O. Box 27428, Albuquerque, NM 87125-7428 (new address for payments only)  
 (505) 841-4403 (505) 841-4420 - Fax

(Payment is not required for Type "A" Projects – Street, Highway, Utility & Light Engineering)

**Apprenticeship & Training Contribution Compliance Statement**  
 For the Month of:        20      

(Circle One)

Contractor / Sub / 2<sup>nd</sup>. Tier Sub: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_ State Wage Dec.No. \_\_\_\_\_

**(DO NOT submit payments on 100% federally-funded projects)**

(SAMPLE ENTRY) Classification(s)	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Total Hours	Appr. Rate per Hour	Total Classif. Contr.Amt
LABORER	8/4	8/11	8/18	8/25	8/31	41	.20	8.20
Classification(s)	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Total Hours	Appr. Rate per Hour	Total Classif. Contr.Amt

PLEASE CHECK APPROPRIATE BLANK:

Paid to: PUBLIC WORKS APPRENTICESHIP & TRAINING FUND (Mail to P.O. BOX)  
 Check No. \_\_\_\_\_ Check Amt: \_\_\_\_\_

Payroll Clerk's (PRINT)

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Forms due by 15<sup>th</sup> of each month on every public works project that has apprenticeship contribution on the wage decision. In accordance with the NM Apprenticeship & Training Act, payment is due for each journey person, even if your company has no apprentices.

**(WE WILL NOT ACCEPT CREDITS WHEN PAYMENT IS OVER PAID)**

~~Each wage decision needs a separate compliance statement, but only one check is needed for all statements.~~

(When paying to an approved program, complete section below & mail this form along with a copy of the check to the following address: Public Works Bureau, 625 Silver Ave SW, Ste 410, Albuquerque, NM 87102)

\_\_\_\_ Paid to: Name of Approved NM Apprenticeship Program  
 Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Apprenticeship Program No.: \_\_\_\_\_  
 (If in doubt, call 841-4403)

Print Name of Certifying Official: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature of Certifying Official: \_\_\_\_\_ Date: \_\_\_\_\_

## **F. *Notices to Contractors***

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**List of Notice to Contractors for****LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270**

The Notice to Contractors listed herein modify the New Mexico Department of Transportation Standard Specification for the City of Santa Fe Projects.

	Page
<b>NOTICE TO CONTRACTORS</b>	
▪ Contract Time	E-4
▪ Countdown Pedestrian LED Signal Units	E-5
▪ Restricted Work Hours	E-9
▪ Quantities	E-10
▪ Performance and Payment Bond	E-11
▪ Ramp-Up Time	E-12
▪ Bar Graph Baseline Schedule	E-13
▪ Coordination of Utility Relocations/Installations	E-14

## **NOTICE TO CONTRACTORS**

**CN S100270**  
**November 15, 2011**

### **CONTRACT TIME**

#### **Contract Term**

The term of this agreement shall be one hundred twenty (120) Calendar days from date of award.

#### **Contract Completion Date**

The day count for all work will be assigned by the Project Engineer on a task by task basis. If the day count is not met the Contractor shall be assessed liquidated damages for each consecutive Working Day or Calendar Day in excess of the completion date in accordance with Section 108.8, Liquidated Damages, of the Standard Specifications. See Construction Agreement, Article 6, Page B-6 of this document.

**NOTICE TO CONTRACTORS****CN S100270  
JUNE 23, 2014****COUNTDOWN PEDESTRIAN LED SIGNAL UNITS**

The countdown pedestrian LED signal units shall comply with the following specifications

- 1 The Manual on Uniform Traffic Control Devices,( MUTCD) , most current edition. Pay particular attention to Chapter 4E. PEDESTRIAN CONTROL FEATURES
- 2 Institute of Transportation Engineers ITE "Pedestrian Traffic Control Signal Indicators: Light Emitting Diode (LED) Signal Modules dated August 4, 2010
- 3 Prior to purchasing Countdown Pedestrian Heads, the Contract shall submit manufacture's specifications, warranties and shop drawings to the City of Santa Fe Traffic Signal Shop for review and approval.
- 4 The Contractor shall provide a visor and grate for each pedestrian signal head installed for the purpose of reducing glare. The cost for visor and grate shall be considered incidental to bid item 712202 - FURNISH & INSTALL PEDESTRIAN COUNTDOWN SIGNAL HEAD (LED) and no additional payment shall be made.
- 5 The Contactor shall dispose of all signal heads taken down. Cost for disposal shall be considered incidental to bid item 712202 – PEDESTRIAN COUNTDOWN SIGNAL (LED) and no additional payment shall be made.
- 6 Below is the table showing the signalized intersection and location of the pedestrian signal heads that are to be replaced with pedestrian countdown signal heads.

**CITY OF SANTA FE TRAFFIC SIGNAL INVENTORY  
CURRENT INVENTORY OF NON COUNTDOWN  
PEDESTRIAN SIGNALS THAT REQUIRE REPLACEMENT**

Jan-14

No.	Description of Intersection	Distribution of pedestrian heads around the intersection					Total Non Countdown Ped Heads
		NW Quadrant	NE Quadrant	SW Quadrant	SE Quadrant		
1	Cerrillos Road & Paseo de Peralta	2	2	2	2	8	
2	Cerrillos Road & Guadalupe Street / Don Diego Avenue	2	2	2	2	8	
3	Cerrillos Road & Second Street	2	2	2	2	8	
4	Cerrillos Road & Lujan Street	2	2	2	2	8	
5	Cerrillos Road & Wal-Mart / Camino Consuelo 7 of 8 are countdown	2	2	2	2	1	
5	Cerrillos Road & Airport Road / Rodeo Road	4	2	2	2	10	
6	Cerrillos Road & Wagon Road / Camino Entrada	2	2	2	2	8	
7	Cerrillos Road & Jaguar Drive	2	2	2	2	8	
8	St. Francis Drive & Alamo Drive	2	2	2	2	8	
9	St. Francis Drive & Paseo de Peralta / Camino de Crucitas	2	2	2	2	8	
10	St. Francis Drive & Agua Fria Street	2	2	2	2	8	
11	St. Francis Drive & Paseo de Peralta / Hickox Street	2	2	2	2	8	
12	St. Francis Drive & Saw Mill Road 2 of 12 pedestrian heads are countdown	3	3	3	3	10	
13	St. Michael's Drive & Fifth Street	2	2	2	2	8	
14	St. Michael's Drive & Calle Lorca	2	2	2	2	8	
15	St. Michael's Drive & Pacheco Street	2	2	2	2	8	
16	St. Michael's Drive & Galisteo Street	2	2	2	2	8	
17	St. Michael's Drive & Botolph Road / Hospital Drive 1 of 8 pedestrian heads are countdown	2	2	2	2	7	

No.	Description of Intersection	NW Quadrant	NE Quadrant	SW Quadrant	SE Quadrant	Total Non Countdown Pedestrian Heads
18	St. Michael's Drive & Arroyo Chamiso	2	2	2	2	8
19	St. Michael's Drive & Old Pecos Trail	1	1	0	0	2
20	Paseo de Peralta & DeVargas Mall	2	2	1	1	6
21	Paseo de Peralta & Guadalupe Street (north)	2	2	2	2	8
22	Paseo de Peralta & Palace Avenue	2	2	2	2	8
23	Paseo de Peralta & Alameda Street	2	2	2	2	8
24	Paseo de Peralta & Old Santa Fe Trail	2	2	2	2	8
25	Paseo de Peralta & Galisteo Street	2	2	2	2	8
26	Paseo de Peralta & Guadalupe Street (south)	2	2	2	2	8
27	Agua Fria Street & Camino Alire	2	2	2	2	8
28	Agua Fria Street & Avenida Cristobal Colon	2	2	2	2	8
29	Agua Fria Street & South Meadows	1	1	2	2	6
30	Agua Fria Street & Osage Avenue	2	2	2	2	8
31	Old Pecos Trail & Zia Road	2	2	2	2	8
32	Old Pecos Trail & Rodeo Road	2	2	0	0	4
33	Zia Road & Rodeo Road	0	0	1	1	2
34	Zia Road & Camino Carlos Rey	2	2	2	2	8
35	Zia Road & Yucca Street	2	2	2	2	8
36	Zia Road & San Miguel Plaza	2	2	2	2	8
37	Rodeo Road & Zafarano Drive	2	2	2	2	8
38	Rodeo Road & Sam's Club	2	2	2	2	8
39	Rodeo Road & Paseo de los Pueblos (west)	2	2	2	2	8
40	Rodeo Road & Avenida Las Campanas	2	2	1	1	6
41	Rodeo Road & Sawmill Road	2	2	2	2	8

No.	Description of Intersection	NW Quadrant	NE Quadrant	SW Quadrant	SE Quadrant	Total Non Countdown Pedestrian Heads
42	Alameda Street & Guadalupe Street 7 of 8 countdown	2	2	2	2	1
43	Alameda Street & Old Santa Fe Trail	2	2	2	2	8
44	San Francisco Street & Guadalupe Street	2	1	1	0	4
45	Sandoval Street & Montezuma Street	0	0	0	0	0
46	Cordova Road & Don Gaspar Avenue	2	2	2	2	8
47	Cordova Road & Galisteo Street	2	2	2	2	8
48	Cordova Road & Don Diego	2	2	2	2	8
49	Washington Avenue & Artist Road	2	2	2	2	8
50	Guadalupe Street & Catron Street / Park Avenue	2	2	2	2	8
51	Guadalupe Street & Montezuma Street	0	1	1	0	2
52	Airport Road & Constellation 7 of 8 pedestrian heads are countdown	2	2	2	2	1
53	Airport Road & Paseo del Sol West - 4 of 6 heads are countdown	1	2	1	2	2
54	San Mateo Road & Pacheco Street	2	2	2	2	8
55	San Mateo Road & Calle Lorca	2	2	2	2	8
56	Rufina Street & Calle Atajo	2	2	2	2	8
57	Rufina Street & Siler Road	2	2	2	2	8
58	Second Street & Lena Street / Hopewell Street 1 of 6 are countdown pedestrian heads	2	1	1	2	5
<b>TOTAL</b>						<b>405</b>

**NOTICE TO CONTRACTORS**

**CN S100270  
NOVEMBER, 2011**

**RESTRICTED WORK HOURS**

**Work Hours**

No lane closures shall be permitted during peak hours (6am to 9am, and 4pm to 7pm). During peak hours all lanes shall remain open and accessible. At all times, access shall be provided to properties and businesses.

The Contractor shall comply with City of Santa Fe Noise Ordinance (Ordained as Code 1973, §31.2-1 by Ord. #1981-10, §1; SFCC 1981, §6-23-1), as well as any subsequent changes to the ordinance throughout the term of this contract.

## **NOTICE TO CONTRACTORS**

**CN S100270  
NOVEMBER, 2011**

### **QUANTITIES**

#### **Mobilization Item**

Mobilization, Item Number: 621000, assumes one-way mileage to Santa Fe. The Unit Bid Price provided by bidder is to assume all mobilization expenses based on one-way mileage to Santa Fe, NM.

## **NOTICE TO CONTRACTORS**

**CN 2101280**

**July 9, 2014**

### **Ramp-Up Time**

The Contractor shall commence work on this contract on the date(s) specified in the Notice to Proceed or within sixty (60) Calendar Days from the date(s) specified in the Notice to Proceed. Date selected for commencement must be coordinated and approved by the Project Manager. The Contractor may use this period for initial project ramp-up work such as obtaining necessary permits, environmental clearances, stockpiling of materials, development of shop drawings, crushing operations or other activities that do not impact traffic within the project limits. No additional time extensions or project suspensions will be granted unless for reasons caused by conditions beyond the control of and not the fault of the Contractor.

## **NOTICE TO CONTRACTORS**

**CN S100270**  
**June 13, 2014**

### **BAR GRAPH BASELINE SCHEDULE**

This project shall utilize a Bar Graph Baseline Schedule format in accordance with Standard Specifications for Section 108 – Prosecution and Progress, Subsection 108.3.2.2 – Bar Graph Baseline Schedule.

## **NOTICE TO CONTRACTORS**

**CN S100270**  
**November, 2011**

### **COORDINATION OF UTILITY RELOCATIONS / INSTALLATIONS**

#### **WORK DESCRIPTION**

The highway contractor's work shall include coordination efforts with respective utility owners, including the time required for utility facilities located within the project limits to be located and relocated. This Notice to Contractor does not change the requirements as outlined in the Standard Specifications for Highway and Bridge Construction regarding utilities.

#### **CONSTRUCTION REQUIREMENTS**

The Highway Contractor shall make the necessary arrangements with the utility owner(s), and shall submit a schedule of highway work to be accomplished. This shall be officially acknowledged and verified by a representative of the utility owner, and a copy provided to the Project Manager.

Utility contacts are listed in the table below.

#### **UTILITY OWNERS**

<b>Utility Owner</b>	<b>Contact &amp; Ph. No.</b>	<b>Utility Work By:</b>
New Mexico Gas Company – (Gas Services)	Andrea Martinez (505) 473-7228	NMGC <sub>o</sub> .
Public Service Co. of New Mexico – (Electric Services)	Tom Dominquez (505) 473-3209	PNM
Century Link Communications	Mel Huston (505)473-2195	Century Link Communications
Comcast Cable of Santa Fe	Dave Aikin (505)438-5830	Comcast
City of Santa Fe Water	Brian Snyder (505)955-4267	Contractor
City of Santa Fe Sewer City of Santa Fe Traffic Signals & Roadway Lighting	Bryan Romero (505)955-4623 Rick Devine 505-955-2320	Contractor Santa Fe Signal Shop

#### **OTHER REQUIREMENTS**

The Highway Contractor shall take the necessary precautions to protect any utility from damage caused by highway construction operations. If any such utility is damaged, the Highway Contractor shall bear the cost of repair to the satisfaction of the utility owner.

**END OF NOTICE**

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## **G. *Special Provisions***

**STANDARD SPECIFICATIONS, SPECIAL PROVISIONS, AND  
SUPPLEMENTAL GENERAL CONDITIONS  
FOR**

**LED Countdown Pedestrian Head Installation at Various Intersections, CN S100270**

The “New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction,” 2014 Edition, and the New Mexico Standard Specifications for Public Works Construction, are incorporated by reference, the same as if fully rewritten therein, in the contract, proposal, bond, and other contract documents for work to be performed under this contract for the City of Santa Fe. Said “New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction,” 2014 Edition, and the New Mexico Standard Specifications for Public Works Construction, are for the purpose of the contract, proposal, bond, and other contract documents, supplemented, modified, and amended as follows, and as may be hereinbefore and hereinafter provided.

Whenever, in the Special Provisions the word “Section” is followed by a number and a caption (such as “Section 102.4 – Rejection of Proposals”) reference is made to that specific section of the “New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction,” 2014 Edition. The Supplemental General Conditions, Special Provisions and Supplemental Specifications shall govern over the Standard Specifications and are hereby made a part of the Contract Documents.

**Where a conflict occurs between NMDOT and City of Santa Fe Special Provisions or City of Santa Fe Instructions to Bidders, the City of Santa Fe Special Provisions and Instructions to Bidders shall control.**

New Mexico Department of Transportation Standard Specifications and Special Provisions shall be interpreted using the following list where not covered by the Supplemental General Conditions contained herein. References listed to the right are to replace those on the left where those on the left appear in the text.

**REFERENCE:**

Commission, Department, District,  
District Engineer, The State  
Highway Commission or Department,  
Cabinet Secretary or Secretary

**REPLACE WITH:**

The City of Santa Fe except where  
such reference is to rules, codes,  
or regulations, or pre-qualification  
of bidders of the New Mexico  
Department of Transportation

REFERENCE:

Department

REPLACE WITH:

The City or its Consultant as applicable

Engineer

The City of Santa Fe Traffic Engineering Division Director acting through his duly authorized representative who is normally the Project Engineer, Project Manager or Consulting Engineer.

Project Manager

The individual designated by the Engineer who is responsible for observing construction and the administration of the project.

State

City or Owner

## **F.1 Special Provisions to the NMDOT Standard Specifications For Road & Bridge Construction, 2014 Edition and Special Provisions**

The Special Provisions listed herein modify the New Mexico Department of Transportation Standard Specification for the City of Santa Fe Projects.

	Page	
<b>SPECIAL PROVISIONS</b>		
Section 101	Abbreviations, Symbols, Definitions and Terms	F-5
Section 102	Bidding Requirements and Conditions	F-7
Section 103	Award and Execution of Contract	F-9
Section 104	Scope of Work	F-9
Section 105	Control of Work	F-10
Section 106	Control of Materials	F-11
Section 107	Legal Relations, Environmental Requirements and Responsibility to Public	F-15
Section 108	Prosecution and Progress	F-17
Section 109	Measurement and Payment	F-18
Section 702	Construction Traffic Control Devices	F-19

**SPECIAL PROVISIONS TO THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION  
STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION  
2014 EDITION**

All provisions of the “New Mexico Department of Transportation Standard Specifications for Road and Bridge Construction” – 2014 Edition shall apply except as modified herein.

**DIVISION 100 - GENERAL PROVISIONS**

**SECTION 101 – ABBREVIATIONS, SYMBOLS, TERMS, AND DEFINITIONS**

**SECTION 101.4 – TERMS AND DEFINITIONS.**

Add the following definitions:

**AS-BUILT PLANS** - Final drawings reflecting work and quantities performed under the contract.

**CITY** - The City of Santa Fe, New Mexico.

**CONDUIT** - A pipe of tube used for receiving and protecting utility lines.

**CONTRACT ITEM (PAY ITEM)** – A specifically described unit of work for which a price is provided in the contract.

**COST REDUCTION PROPOSALS.** Contractor –provided alternates to the work methods or materials specified in the contract that establish a better or approved equal product or result without affecting the functional purpose of the work being revised and that produce a net savings to the owner.

**OWNER** - The contracting agent. "City of Santa Fe".

**RIGHT OF WAY AGREEMENT** - A contract with a property owner to sell specific rights to the City for real property necessary to construct or maintain roadways.

**UNIT BID PRICE** - The Price established be the Contractor for an individual item of work on the bid form.

Modify the following definitions:

**ASSISTANT DISTRICT ENGINEER** – Delete entire definition.

**AWARD** - Delete the entire sentence and replace with: "The written acceptance by the owner of the complete set of Contract Documents as set forth in the

Instructions for Bidders, Article 6".

BID FORM - Replace the word "Department" with "Owner".

BID GUARANTY - Replace the word "Department" with "Owner".

CABINET SECRETARY - Delete entire definition.

CONSTRUCTION MAINTENANCE EASEMENT - Replace the word "Department" with "Owner".

CONTRACT - In the first sentence replace the word "Department" with "Owner".

CONTRACTOR - Replace the word "Department" with "Owner".

DEPARTMENT - Delete entire subsection.

DISTRICT - Delete entire definition.

DISTRICT ENGINEER - Delete entire definition.

DISTRICT CONSTRUCTION ENGINEER - Delete entire definition.

ENGINEER - Delete entire definition and replace with "Roadway & Trails Engineering Division Director acting through and duly authorized representative, who is normally the Project Engineer, Project Manager or Consulting Engineer".

ENVIRONMENTAL SPECIALIST – At the beginning after “The individual” add “designated by the Engineer,”

GENERAL OFFICE - Delete entire definition.

INSPECTOR - Replace the wording "project manager's" with "Engineer's".

LABORATORY - Delete entire definition and replace with "an approved testing laboratory under the supervision and responsibility of a New Mexico Registered Professional Engineer".

LANDSCAPE ARCHITECT – Replace the words “Cabinet Secretary’s” with “Engineer’s”.

LIGHTING AND SIGNING ENGINEER - Replace the word "Department" with "Owner".

PAY ADJUSTMENT - Replace the word "Department" with "Owner".

PROFILE GRADE - Replace the word "Department" with "Engineer".

PROJECT MANAGER - Delete entire definition and replace with "The individual designated by the Engineer who is responsible for observing construction and the administration of the project".

SECRETARY - Delete entire definition.

SUBSTANTIAL COMPLETION – Replace the words "District Construction Engineer" with "Engineer".

SUPPLEMENTAL AGREEMENT - Replace the word "Department" with "Owner".

SUSPENSION AND DEBARMENT - Replace the word "Department" with "Owner".

UNBALANCED BID - Replace the word "Department" with "Owner".

VALUE ENGINEERING COST PROPOSAL - Replace the word "Department" with "Owner", replace the words "Project Manager" with "Engineer".

WORKING DAY - Replace the word "Department" with "Owner".

## **SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

102.3 SUSPENSION AND DEBARMENT. Delete the paragraph in its entirety and substitute the following:

102.3 SUSPENSION FROM BIDDING. The Owner may suspend for a period of up to thirty-six months any person and any subsidiary or affiliate of any person from bidding on City projects and from being a subcontractor or supplier on City projects if that person or any officer, director, employee or agent of that person is debarred under New Mexico State Highway and Transportation Department Regulations or City of Santa Fe Purchasing provisions. Under that section, "a person" means any individual, partnership, Corporation, association or other entity formed for the purpose of doing business as a contractor, subcontractor or supplier."

102.4 BID PACKAGE. First paragraph, first sentence replace the word "Department" with "Owner". Delete the second bulleted sentence.

102.5 REFUSAL OR REJECTION OF BIDS. First paragraph, first sentence and in subsections (2.), (7.), (9.), and (10.), replace the word "Department" with "Owner".

102.7 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND

SITE OF WORK. Replace the word "Department" with "Owner" throughout entire subsection.

102.8 Delete Subsection 102.8 - PREPARATION OF BID and substitute the following:

102.8 PREPARATION OF BID. The bidder shall submit his proposal on the forms furnished by the Owner. The blank spaces in the proposal shall be filled in correctly where indicated, for each item given and the bidder shall state both in words and numerals, written or printed in ink or typewritten, the unit bid prices for which he proposes to do each item of the work contemplated. In case of a discrepancy between the prices written in words and those written in numerals, the prices written in words shall govern.

In the event that either the unit bid price written in words or the unit bid price written in numerals is inadvertently omitted, the unit bid price that is shown for that item shall govern. If both the written and numerical unit bid price is omitted, the extended total shall be divided by the estimated quantity thereby establishing a unit bid price. If the written price, numerical unit bid price and extended total are omitted, the bid proposal shall be rejected.

The bidder shall specify a unit bid price for each item, except when a unit bid price is established by the Owner. The unit bid price will be taken to include any and all insurance and overhead expense necessary to complete that bid item.

The bidder shall show the products of the respective unit bid prices and quantities and shall also show the total amount of his bid in the space provided in the proposal form. Said total amount bid shall be the total sum obtained by adding the amounts of the individual items.

The bidder is permitted to show the amount(s) for the respective unit bid price(s) written in words and written in numerals to a maximum of two decimal places. Any additional decimal places in excess of two shall be truncated and will not be considered in the processing of the proposal.

102.9 INNOVATIVE CONTRACT INCENTIVES. Replace the word "Department" with "Owner".

102.10 IRREGULAR BIDS. Replace the word "Department" with "Owner".

102.12 DELIVERY OF BIDS. Replace the word "Department" with "Owner" throughout.

102.13 REVISION OF BIDS. Replace the word "Department" with "Owner".

102.14 WITHDRAWAL OF BIDS. Replace the word "Department" with "Owner".

102.15 BID OPENING. Replace the word "Department" with "Owner".

102.16 ENGINEER'S ESTIMATE. Replace the word "Department" with "Owner".

### **SECTION 103 - AWARD AND EXECUTION OF CONTRACT.**

103.1 CONSIDERATION OF BIDS. Replace the word "Department" with "Owner" throughout the subsection.

103.2 AWARD OF CONTRACT - Replace the word "Department" with "Owner" throughout the subsection. Change the time to award contract from thirty-(30) calendar days to sixty-(60) calendar days.

103.3 BIDDING DISPUTE RESOLUTION PROCEDURES - Replace the word "Department" with "Owner" throughout the subsection. Replace the word "Secretary" with "Engineer" throughout the subsection.

103.4 CANCELLATION OF AWARD. Replace the word "Department" with "Owner" throughout.

103.5 RETURN OF BID GUARANTEE - Delete entirely.

103.6 REQUIREMENT OF CONTRACT BOND. Replace the word "Department" with "Owner".

103.7 EXECUTION AND APPROVAL OF CONTRACT. Replace the word "Department" with "Owner".

103.8 FAILURE TO EXECUTE CONTRACT. Replace the word "Department" with "Owner".

### **SECTION 104 - SCOPE OF WORK.**

104.1 INTENT OF THE CONTRACT. Replace the word "Department" with "Owner" throughout.

104.2 SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK. Replace the word "Department" with "Owner" throughout the subsection.

104.3 DIFFERING SITE CONDITIONS. Replace the word "Department" with "Owner".

104.4 EXTRA WORK. Replace the word "Department" with "Owner" throughout the subsection.

104.5 MAINTENANCE OF TRAFFIC - Replace the word "Department" with "Owner" throughout the subsection.

104.6 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK - Replace the word "Department" with "Owner" throughout the subsection.

104.8 VALUE ENGINEERING COST PROPOSAL (VECP). Replace the word "Department" with "Owner" throughout the subsection.

### **SECTION 105 - CONTROL OF WORK.**

105.1 RESPONSIBILITY AND AUTHORITY OF THE DEPARTMENT - Replace the word "Department" with "Owner" in the subsection heading and throughout the subsection.

105.2 PLANS AND THE WORKING DRAWINGS. Replace the word "Department" with "Owner" throughout the subsection.

105.3 COMPLIANCE WITH PLANS AND SPECIFICATIONS. Replace the word "Department" with "Owner" throughout the subsection.

105.4 COORDINATION OF CONTRACT DOCUMENTS. Replace the word "Department" with "Owner" throughout the subsection.

105.5 COOPERATION BY CONTRACTOR. Replace the word "Department" with "Owner" throughout.

105.6 COOPERATION WITH UTILITIES. Replace the word "Department" with "Owner" throughout.

105.7 COOPERATION BETWEEN CONTRACTORS. Replace the word "Department" with "Owner" throughout.

105.8 AUTHORITY AND DUTIES OF PROJECT MANAGER. Delete entire subsection and substitute the following:

"105.8 AUTHORITY AND DUTIES OF PROJECT MANAGER. The Project Manager, as a project representative of the Engineer, shall have the authority to conduct on-site observations of the work in progress. Such on-site observation may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used.

The Project Manager will not be authorized to alter or waive the provisions of the contract, issue instructions contrary to the plans or specifications, or act on or undertake any responsibilities of the Contractor.

The Project Manager shall refer to the Engineer all defects and deficiencies occurring in the work and shall be the liaison between the Engineer and the Contractor regarding such defects and deficiencies."

The Project Manager will be responsible for determining constructed quantities and for administration of monthly progress payments.

105.9 DUTIES OF THE INSPECTOR. Delete entire subsection.

105.10 INSPECTION OF WORK. Replace the word "Department" with "Engineer" throughout the subsection.

105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK. Replace the word "Department" with "Engineer" throughout the subsection.

105.12 LOAD RESTRICTIONS - Replace the word "Department" with "Owner" throughout the subsection.

105.13 HAUL ROADS - Replace the word "Department" with "Owner" throughout.

105.15 MAINTENANCE DURING CONSTRUCTION - Replace the word "Department" with "Owner" throughout the subsection.

105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE - Replace the word "Department" with "Owner" throughout the subsection.

105.17 CONTRACT ADJUSTMENT FOR SUSPENSION OF WORK - Replace the word "Department" with "Owner" throughout the subsection.

105.18 ACCEPTANCE. Subsection (105.18.2) Final Acceptance, replace the wording "and the District Construction Engineer" with "Engineer and Owner". Replace the word "Department" with "Owner" throughout the subsection.

105.19 NOTICE OF POTENTIAL CLAIM. Delete this entire Subsection.

105.20 ADMINISTRATIVE REMEDY. Delete this entire Subsection.

## **SECTION 106 - CONTROL OF MATERIALS.**

106.1 CONTRACTOR-FURNISHED AGGREGATE AND BORROW SOURCE. Replace the word "Department" with "Owner" throughout.

106.2 SUPPLIER PLANT INSPECTION. Replace the word "Department" with "Owner" throughout the subsection.

106.3 SAMPLES, TESTS, CITED SPECIFICATIONS. Replace the word "Department" with "Owner" throughout the subsection. Delete the second paragraph. Add to this subsection the following:

Sampling and testing of materials and manufactured items incorporated into the work shall be accomplished as designated in the invitation for bid package. All sampling and testing shall be performed by an approved testing laboratory, on the Department's approved list, under the supervision and responsibility of a New Mexico Registered Professional Engineer. Materials and items manufactured outside the State of New Mexico shall be accompanied by a Certificate of Compliance prepared in accordance with requirements of subsection 106.4 - Certificate of Compliance.

Job mix formulae and design mixes shall be prepared by an approved testing laboratory, on the Department's approved list, under the supervision and responsibility of a New Mexico Registered Professional Engineer. All formulae and design mixes shall be approved by the Engineer prior to materials being incorporated into the work. The Engineer shall determine the type, number, and location of tests to be performed.

Copies of all laboratory and field test results shall be forwarded to the Engineer and the Owner, as soon as reasonably possible after the tests are complete. No subsequent work shall be accomplished until such time that test results have been received and approved by the Project Manager.

The Contractor shall bear the cost of all re-testing due to the first test or subsequent tests failing to show results meeting the specifications.

106.4 CERTIFICATE OF COMPLIANCE - Delete in its entirety and replace with the following:

Submittals include the furnishing of all manufacturer's data, shop drawings, samples, certifications, guarantees, lab and field test reports, operation manuals, maintenance manuals, lubrication charts, design mixes, spare parts lists, special tools, and factory representative required for installation of special items, in full compliance with the Contract Documents. All submittals shall be submitted for Engineer's review before installation or incorporation into work or within 30 days after effective date of Notice to Proceed, unless the Engineer approves a different schedule. Each submittal shall include reference to project and date, general summary description of items being submitted and a certificate of compliance signed by the appropriate company official.

Should any requirements pertaining to submittals not be complied with, including

but not limited to submittal time and procedure, Contractor waives any right of claim for loss of time or money purporting to have occurred as a result of any delay in obtaining review of submitted data or shop drawings.

On the following pages are listed items, which will be required to complete the work for which submittals shall be required. The schedule of submittals is for the convenience of the Contractor, and shall not be considered as complete or final. Additional submittals may be required as the Work progresses, which shall be submitted within 15 days of notification.

The following is a general explanation of some of the terms used in the schedule of submittals chart included herein:

**Manufacturer's Data:** Catalog type literature on the item.

**Shop Drawings:** Detailed drawings with all dimensions and locations shown.

**Samples:** The item that will be supplied.

**Certifications:** Any certifications required by these Specifications or standard specification and/or requirements for that item, to cover raw materials and testing of the final product.

**Guarantees:** A copy of the guarantee to be given to the Owner on a particular item.

**Lab Test Reports:** Laboratory test reports required to show that the item meets all specified requirements, or required for the preparation of a design mix or job mix formula.

**Field Test Reports:** Reports of tests that have been conducted on the item as installed or constructed in the field.

**Design Mix:** Design or job mix formulae, prepared by a qualified testing laboratory, under the direct supervision of Registered Professional Engineer, stating a recommended mix or combination of materials to produce a specified product. If permitted by the Contract Documents, a design or job mix formula submitted which is not prepared specifically for this Project shall have been prepared within one year of the date of the Agreement and shall be accompanied by a certification from the testing laboratory stating that the materials proposed for use have the same properties as those previously tested.

**Computations:** Calculation required to arrive at the design of a particular item submitted as a shop drawing.

<p><b>Schedule of Submittals:</b></p> <p>LED Countdown Pedestrian Head Installation at Various Intersections</p> <p>(All submittals shall be in 2 copies)</p>			Manufacturer & Data & Source	Shop Drawings	Samples	Certificates	Guarantees	Lab Test Reports	Maintenance Manuals	Special Tools	Lubrication Charts & Grease Specs	Spare Parts List Recommended	Factory Representative Req. for Install.	Field Test Reports	Design Mix & Supporting Documents	Computations
Backfill & Subgrade																
Borrow																
Gravel Base Course Aggregate																
Plant Mix Bituminous Pavement																
Bituminous Material & Hydrated Lime																
Tack Coat																
Prime Coat																
Concrete																
Aggregate for Concrete																
Cement																
Concrete Admixtures																
Reinforcing Steel																
MH Ring & Cover Set																
Sign Posts																
Signs Materials / Reflective Tape, etc.																
Paint & Striping																
Silicone Acrylic Concrete Stain																
Seeding																
Signal & Lighting Items				X		X										
Irrigation Items																

- 106.5 FOREIGN MATERIALS - Replace the word "Department" with "Owner" throughout the subsection.
- 106.6 STORAGE OF MATERIALS - Replace the word "Department" with "Owner" throughout the subsection.
- 106.7 HANDLING AND TRANSPORTING MATERIAL - Replace the word "Department" with "Owner" throughout the subsection.
- 106.8 DEPARTMENT-PROVIDES MATERIAL. Delete this title and replace with "NON-CONTRACTOR FURNISHED MATERIAL". Replace the words "the Department" with "others".
- 106.9 MATERIALS DESIGNATED BY TRADE NAME - Replace the word "Department" with "Owner" throughout the subsection.
- 106.10 EQUIPMENT AND MATERIAL GUARANTEES AND WARRANTIES. Replace the word "Department" with "Owner" throughout. In the second sentence replace the wording "six months" with "twenty-four months", and in the third sentence replace the wording "six-month" with "twenty-four months". Add to this subsection the following:
- "General Guaranty"
- Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from, which shall appear within a period of two years from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness."
- 106.11 PREFERENCE FOR DOMESTIC MATERIALS - Replace the word "Department" with "Owner" throughout the subsection.

## **SECTION 107 - LEGAL RELATIONS, ENVIRONMENTAL REQUIREMENTS, AND RESPONSIBILITY TO THE PUBLIC.**

- 107.1 LAWS TO BE OBSERVED. First paragraph, last sentence, replace "state" with "Owner".
- 107.3 COMPLIANCE WITH PAYMENT OF TAXES. Replace the word "Department" with "Owner".

- 107.4 GROSS RECEIPT TAXES, INDIAN BUSINESS ACTIVITY, AND TRIBAL EMPLOYMENT RIGHTS ORGANIZATION TAXES. Replace the word "Department" with "Owner" throughout the subsection.
- 107.5 PATENTED DEVICES, MATERIALS, AND PROCESS. Replace the word "Department" with "Owner" throughout the subsection.
- 107.6 RESTORATION OF SURFACES OPENED BY PERMIT. First paragraph replace "Department with "Owner" and delete "municipal or County authorities,". Second paragraph, delete the last sentence and replace with "Individuals, firms or corporations wishing to make an opening in the highway surface must secure a permit from the New Mexico State Highway and Transportation Department and the Owner. The Contractor shall allow parties bearing said permits, and only those parties, to make openings in the highway.
- 107.7 FEDERAL AID PROVISION. Replace the word "Department" with "City".
- 107.8 SANITARY, HEALTH, AND SAFETY PROVISIONS. Replace the word "Department" with "City".
- 107.10 RAILROADS. Replace the word "Department" with "Owner" throughout the subsection.
- 107.11 ENVIRONMENTAL, HAZARDOUS MATERIALS AND CULTURAL RESOURCE APPROVAL. Replace the word "Department" with "Owner" throughout the subsection.
- 107.12 ENVIRONMENTAL, HAZARDOUS MATERIALS AND CULTURAL RESOURCE DISCOVERIES. Replace the word "Department" with "Owner" throughout the subsection.
- 107.13 CONTRACTOR'S RESPONSIBILITY FOR DAMAGE TO ENVIRONMENTAL AND CULTURAL RESOURCES. Replace the word "Department" with "Owner".
- 107.14 CONTRACTOR'S RESPONSIBILITY FOR ENVIRONMENTAL AND CULTURAL RESOURCE PROTECTION. Replace the word "Department" with "Owner".
- 107.18 PROTECTION AND RESTORATION OF PUBLIC AND PRIVATE PROPERTY. Replace the word "Department" with "Owner".
- 107.19 RESPONSIBILITY FOR THIRD PARTY CLAIMS AND DUTY TO DEFEND. Replace the word "Department" with "Owner".
- 107.20 CONTRACTOR'S RESPONSIBILITY. Replace the word "Department" with

"Owner" throughout the subsection.

- 107.21 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES. In the fourth paragraph replace the word "State" with "City".
- 107.22 FURNISHING RIGHT OF WAY. Replace the word "Department" with "Owner".
- 107.23 PERSONAL LIABILITY OF PUBLIC OFFICIALS. Replace the word "Department" with "Owner" throughout the subsection.
- 107.24 NO THIRD-PARTY LIABILITY. Replace the word "Department" with "Owner" throughout the subsection.
- 107.25 INSURANCE REQUIREMENTS. Replace the word "Department" with "Owner" throughout the subsection.
- 107.26 NO WAIVER OF LEGAL RIGHTS. Replace the word "Department" with "City" throughout the subsection.
- 107.27 CONTRACTORS RESPONSIBILITY FOR THE TRAVELING PUBLIC. In the subsection second paragraph replace the word "Department" with "City".
- 107.29 ASSIGNING OF CONTRACT. Replace the word "Department" with "City" throughout the subsection.

#### **SECTION 108 - PROSECUTION AND PROGRESS.**

- 108.1 SUBCONTRACTING. Replace the word "Department" with "Owner" throughout the subsection.
- 108.2 NOTICE TO PROCEED AND PRE-CONSTRUCTION CONFERENCE. Replace the word "Department" with "Owner" throughout the subsection.
- 108.3 SCHEDULE. Replace the word "Department" with "Owner" throughout the subsection.
- 108.4 UNSATISFACTORY PROGRESS OF WORK. Replace the word "Department" with "Owner" throughout the subsection.
- 108.6 DETERMINATION AND EXTENSION OF CONTRACT TIME. Replace the word "Department" with "Owner" throughout the subsection.
- 108.7 FAILURE TO COMPLETE ON TIME. Replace the word "Department" with "Owner" throughout the subsection.
- 108.8 LIQUIDATED DAMAGES. Replace the word "Department" with "Owner"

throughout the subsection.

108.9 DEFAULT OF CONTRACT. Replace the word "Department" with "Owner throughout the subsection.

108.10 TERMINATION OF CONTRACT; NO FAULT OF CONTRACTOR. Replace the word "Department" with "Owner" throughout the subsection.

### **SECTION 109 - MEASUREMENT AND PAYMENT.**

109.1 MEASUREMENT OF QUANTITY. Replace the word "Department" with "Owner throughout the subsection.

109.2 APPROVED EQUIPMENT RENTAL RATES. Replace the word "Department" with "Owner throughout the subsection.

109.3 SCOPE OF PAYMENT. Replace the word "Department" with "Owner throughout the subsection.

109.4 COMPENSATION FOR OVERRUN / UNDERRUN QUANTITIES. Replace the word "Department" with "Owner throughout the subsection.

109.5 PAYMENT FOR CHANGES, DIFFERING SITE CONDITIONS, AND EXTRA WORK. Replace the word "Department" with "Owner throughout the subsection.

109.6 FORCE ACCOUNT. Replace the word "Department" with "Owner throughout the subsection.

109.7 ELIMINATED ITEMS. Replace the word "Department" with "Owner throughout the subsection.

109.8 PROGRESS PAYMENTS. Replace the word "Department" to "Owner" throughout. Fourth paragraph after "Accepted by the Project Manager" add "and Owner".

109.10 PROJECT CLOSURE. Replace the word "Department" with "Owner" throughout the subsection.

109.11 COMPENSATION FOR CLAIMS. Replace the word "Department" with "Owner" throughout the subsection.

### **End of Division 100 – General Provisions**

NEW MEXICO DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISIONS  
FOR  
**CONSTRUCTION TRAFFIC CONTROL DEVICES**  
**SECTION 702-C**

All pertinent provisions of the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, 2014 Edition, shall apply in addition to the following:

**1.0 DESCRIPTION.**

**1.01** This work shall consist of implementing the necessary traffic control during construction in conformance with the contract and the Manual of Uniform Traffic Control Devices. The Contractor shall submit all proposed traffic control changes to the contract traffic control plan detailed in the construction plans to the Project Manager, for review and approval by the District Traffic Engineer/or Local Government Agency Engineer or designee, prior to beginning construction operations.

**1.02** The Contractor shall furnish all materials, tools, labor, equipment and all other appurtenances necessary to complete the work. The materials shall include, all interim and temporary signing, temporary stripe removals, construction signing, steel posts, base posts, portable sign supports, barricades, drums, sequential arrow displays, and flaggers as necessary to complete the traffic control detailed in the construction plans or modifications to the plan details as approved by the District Traffic Engineer including all setups and resetting of devices.

**1.03** Submittals. **The Contractor shall submit a summary of all necessary traffic control devices for this project in the format shown as TABLE 1 to the Project Manager at least two (2) weeks prior to the pre-construction conference. See the example labeled TABLE 1. A minimum of five (5) copies shall be provided to the Project Manager. The summary shall be complete with appropriate supporting sections referenced, device descriptions, units of measure, quantities required, unit costs, and total costs for each type of device. The itemized costs for each device shall include all associated work and materials defined in the appropriate supporting section of the standard specifications, including all revisions. The Contractor will not be allowed to initiate any work on the project until TABLE 1 has been provided to the Project Manager.**

**TABLE 1 (EXAMPLE)**

SUPPORTING SECTION	DEVICE DESCRIPTION	UNIT OF MEASURE	QTY.	UNIT COST	TOTAL COST
<b>SECTION 702 - TRAFFIC CONTROL DEVICES FOR CONSTRUCTION</b>					
SS 702	CONSTRUCTION SIGNING	SQ FT			
SS 702	STEEL POSTS AND BASE POSTS FOR CONSTRUCTION SIGNING	FT			
SS 702	BARRICADE, TYPE I	EACH			
SS 702	BARRICADE, TYPE II	EACH			
SS 702	BARRICADE, TYPE III-1.8 m	EACH			
SS 702	BARRICADE, TYPE III-2.4 m	EACH			
SS 702	VERTICAL PANEL, TYPE SINGLE	EACH			
SS 702	VERTICAL PANEL, TYPE BACK TO BACK	EACH			
SS 702	CONSTRUCTION TRAFFIC MARKER	EACH			
SS 702	PORTABLE SIGN SUPPORT	EACH			
SS 702	CHANNELIZATION DEVICES TYPE DRUM	EACH			
SS 702	SEQUENTIAL ARROW DISPLAY	EACH			
<b>SECTION 704 - PAVEMENT MARKINGS</b>					
SS 704	RETROREFLECTORIZED PAINTED MARKINGS	FT			
SS 704	REMOVABLE MARKING TAPE	FT			
SS 704	TEMPORARY REFLECTIVE RAISED PAVEMENT MARKER TYPE TD	EACH			
SS 704	TEMPORARY REFLECTIVE RAISED PAVEMENT MARKER TYPE TG	EACH			
SS 704	TEMPORARY REFLECTIVE RAISED PAVEMENT MARKER TYPE TH	EACH			
SS 704	TEMPORARY REFLECTIVE RAISED PAVEMENT MARKER TYPE TJ	EACH			
<b>SECTION 721 - PAVEMENT MARKING REMOVAL</b>					
SS 721	REMOVAL OF PAVEMENT STRIPE	FT			
SS 721	REMOVAL OF PAVEMENT MARKING	FT			
<b>TOTAL FOR ITEM # 702810 TRAFFIC CONTROL DEVICES FOR CONSTRUCTION (LUMP SUM)</b>				<b>\$</b>	

**2.0 MATERIALS.**

**2.01** All materials shall conform to the applicable requirements of SECTION 701 - TRAFFIC SIGNS & SIGN STRUCTURES, SECTION 702 – CONSTRUCTION TRAFFIC CONTROL DEVICES, and SECTION 704 - PAVEMENT MARKINGS.

**3.0 CONSTRUCTION REQUIREMENTS.**

**3.01** All construction shall be effected by the Contractor in accordance with the applicable plan details and specifications shown in the contract or modifications to the plan details as approved by the District Traffic Engineer.

**3.02** All materials and devices shall be maintained and replaced if necessary for the duration of the project in conformance with these specifications.

**3.03** Traffic control shall be maintained in conformance with all specifications of SECTION 618 - TRAFFIC CONTROL MANAGEMENT, for the duration of the project.

**3.04** The contractor shall furnish and maintain impact attenuators, glare shields, delineators and connection pins for temporary concrete wall barrier and all other necessary traffic control devices.

**4.0 METHOD OF MEASUREMENT.**

**4.01** When specifically designated for measurement and payment in the contract, traffic control devices during construction will be measured as a lump sum unit.

**5.0 BASIS OF PAYMENT.**

**5.01** The accepted work for traffic control devices during construction will be paid for at the contract unit price lump sum. Payment shall be full compensation for furnishing all materials, tools, labor, equipment, hauling, and any other appurtenances necessary to satisfactorily complete and maintain adequate and safe traffic control until completion of the project.

This shall include all interim and temporary signing, temporary striping, temporary stripe removals, construction signing, steel posts, base posts, portable sign supports, barricades, drums, sequential arrow displays, and flaggers as necessary to complete the traffic control detailed in the construction plans or modifications to the plan details as approved by the District Traffic Engineer including all setups and resetting of devices and no additional separate measurement or payment will be made for such items therefore.

**5.03** Traffic Control Devices During Construction shall not be considered as eligible for a cost savings suggestion.

**Payment will be made under:**

<b>PAY ITEM</b>	<b>PAY UNIT</b>
Traffic Control Devices During Construction	Lump Sum

**End of Division 700 – Traffic Control Devices**