

**PREQUALIFICATION FOR ON CALL
BRIDGE, DRAINAGE, AND OTHER
INCIDENTAL MAINTENANCE FOR
RAILROAD FACILITIES**

STATEWIDE

PH20241120RRPQ

2024

Updated 05/15/2020

STATE PROJECT

MAINTENANCE & OPERATIONS

BIDDING INSTRUCTIONS

1. Use pen and ink to complete all paper Bids. Signatures shall be original. Stamped and copied signatures will not be accepted. Bids are not accepted by email or FAX.

NOTE: Electronic Bids will not be accepted for this bid.

2. As a minimum, the following should be received prior to the time of Bid opening: a) a copy of the Notice to Contractors, b) the completed Acknowledgement of Bid Amendments form, c) the completed Schedule of Items or Schedule of Items in Appendix A, d) two copies of the completed and signed Contract Agreement form, e) the completed Contractor Information Sheet, and f) any other certifications or Bid requirements listed in the Bid Documents as due by Bid opening.
3. Include prices for all items in the Schedule of Items
4. Bid Guaranty acceptable forms are:
 - a) a properly completed and signed Bid Bond on the Department's prescribed form (or on a form that does not contain any significant variations from the Department's form as determined by the Department) for 5% of the Bid Amount or
 - b) an Official Bank Check, Cashier's Check, Certified Check, U.S. Postal Money Order or Negotiable Certificate of Deposit in the amount stated in the Notice to Contractors or
 - c) an electronic bid bond submitted with an electronic bid.
5. All Bid Packages which are mailed or sent express, shall be provided in double (one envelope inside the other) envelopes, for security and other reasons. The *Inner Envelope* shall have the following information provided on it:

Bid Enclosed - Do Not Open
WIN or Title: Prequalification for on Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities.
Towns, Regions or Location: Statewide
Date of Bid Opening:
Name of Contractor with mailing address and telephone number:

In Addition to the usual address information, the *Outer Envelope* should have written or typed on it:

Double Envelope: Bid Enclosed
WIN or Title: Prequalification for on Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities.
Towns, Regions or Location: Statewide
Date of Bid Opening:
Name of Contractor:

If a paper Bid is to be sent express, please take note that overnight services do not always arrive in time and that delivery may be affected by carrier volume, weather and other factors. Packages using express services should be sent directly to the DOT Headquarters Building, Maine Department of Transportation, 24 Child Street, Augusta. "FedEx First Overnight" delivery is suggested as the package is delivered directly to the DOT Headquarters Building, Mailroom, 24 Child Street, Augusta. Allow extra days for U.S. Postal Service Express Mail which has proven not to be reliable and sometimes does not deliver directly to the DOT Headquarters Building but instead delivers to the State of Maine Mail Distribution Center.

If a paper bid is to be mailed, the mailing address is Maine Department of Transportation, 16 State House Station, Augusta, ME 04333-0016. Allow additional working days for this mail to pass through the state mail system in addition to the US Postal Service as this mail is not delivered directly to the Department of Transportation.

If a paper Bid is to be hand carried, deliver directly to the “Public Entrance” which is located on the Capitol Street side of the DOT Headquarters Building in Augusta. <http://www.maine.gov/mdot/contact>. Hand-carried Bids may be in one envelope, and should be marked with the following information:

Bid Enclosed: Do Not Open

WIN or Title: Prequalification for on Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities.

Towns, Regions or Location: Statewide

Date of Bid Opening:

Name of Contractor:

If you need further information regarding Bid preparation, call the DOT Contracts Section at (207) 624-3410.

For complete bidding requirements, refer to Section 102 of the Maine Department of Transportation, Standard Specifications, March 2020 Edition.

NOTICE

The Maine Department of Transportation is attempting to improve the way Bid Amendments/Addendums are handled, and allow for an electronic downloading of bid packages from our website, while continuing to maintain an optional plan holders list.

Prospective bidders, subcontractors or suppliers who wish to download a copy of the bid package and receive a courtesy notification of project specific bid amendments must fill out the on-line plan holder registration form and provide an email address to the MDOT Contracts mailbox at: MDOT.contracts@maine.gov. Each bid package will require a separate request.

Additionally, interested parties will be responsible for reviewing and retrieving the Bid Amendments from our web site, and acknowledging receipt and incorporating those Bid Amendments in their bids using the Acknowledgement of Bid Amendment Form.

NOTICE

Bidders:

Please use the attached “Request for Information” form when submitting questions concerning specific Contracts that have been advertised for Bid, include additional numbered pages as required. RFI’s may be faxed to 207-624-3431, submitted electronically through the Departments web page of advertised projects by selecting the RFI tab on the project details page or via e-mail to RFI-Contracts.MDOT@maine.gov.

These are the only allowable mechanisms for answering Project specific questions. Maine DOT will not be bound to any answers to Project specific questions received during the Bidding phase through other processes.

When submitting RFIs by Email please follow the same guidelines as stated on the “Request for Information” form and include the word “RFI” along with the Project name and Identification number in the subject line.

RFI No: _____

Date _____ **Time** _____

WIN(S): _____ **Town(s):** _____ **Bid Date:** _____

Question(s): _____

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Company Name: _____ **Phone: ()** _____

Email: _____ **Fax:** (____) _____

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Vendor Registration

Prospective Bidders must register as a vendor with the Department of Administrative & Financial Services if the vendor is awarded a contract. Vendors will not be able to receive payment without first being registered. Vendors/Contractors will find information and register through the following link –

<http://www.maine.gov/purchases/venbid/index.shtml>

CONTRACTOR INFORMATION

Contractor Name: _____

Mailing Address: _____

Vendor Customer Number: _____

Contact Information (Primary Contact): _____

Phone: _____ **Cell Phone:** _____

Fax: _____

Email: _____

Mailing Address (if different from above): _____

The company has the following organizational structure:

☐ Sole Proprietorship

☐ Limited Liability Company

☐ Partnership

☐ Joint Venture

☐ Corporation

☐ Other: _____

(Date)

(Signature)

(Name and Title Printed)

**STATE OF MAINE DEPARTMENT OF TRANSPORTATION
NOTICE TO CONTRACTORS**

Sealed Bids addressed to the Maine Department of Transportation, Augusta, Maine 04333 and endorsed on the wrapper "Bids for **Prequalification for On Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities** in the State of Maine" will be received from contractors at the Reception Desk, MaineDOT Building, Capitol Street, Augusta, Maine, until 11:00 o'clock A.M. (prevailing time) on **December 11, 2024** and at that time and place, publicly opened and read. Bids will be accepted from all bidders. **Electronic Bidding will not be available for this bid.**

Description: Prequalification for On Call Railroad Maintenance

Location: Statewide

Outline of Work: Maintenance, Repair, and Observation of Defects of State Railroad Facilities and other incidental work. Maintenance work on railroad facilities is often close by to a roadway or directly accessible by roadway. A contractor is not required to have Hi-Rail equipment to apply for this contract. A contractor is not required to apply for both repair and observation of defect services outlined in the prequalification application.

Basis of Award: The Department and each prequalified contractor may enter into a Contract to perform work pursuant to Assignment Letters.

For general information regarding Bidding and Contracting procedures, contact George Macdougall at (207) 624-3410. Our webpage at <http://www.maine.gov/mdot/contractors/> contains a copy of the Schedule of Items, Plan Holders List, written portions of bid amendments, bid results and an electronic form for RFI submittal. For Project-specific information fax all questions to **John McDonough** at (207) 624-3431, use electronic RFI form or email questions to RFI-Contracts.MDOT@maine.gov, project name and identification number should be in the subject line. Questions received after 12:00 noon of Friday (or if that Friday is a state holiday, Thursday) prior to bid date will not be answered. Bidders shall not contact any other Departmental staff for clarification of Contract provisions, and the Department will not be responsible for any interpretations so obtained. TTY users call Maine Relay 711.

Application packages, Documents, specifications and forms can be viewed and obtained digitally at no cost at <http://www.maine.gov/mdot/contractors/>. They may be obtained from the Maine Department of Transportation, Attn.: Mailroom, 24 Child Street, Augusta, Maine 04333-0016 or requested by telephone at (207) 624-3536.

There will be no bid bond, performance bond or payment bond required.

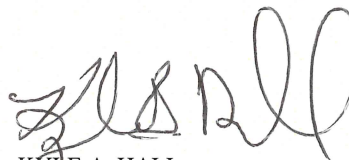
Each Bid must be made upon blank forms provided by the Department.

This Contract is subject to all applicable State Laws.

All work shall be governed by *State of Maine, Department of Transportation, Standard Specifications, March 2020 Edition*, price \$10 [\$15 by mail], and *Standard Details, March 2020 Edition*, price \$10 [\$15 by mail]. They also may be purchased by telephone at (207) 624-3536. *Standard Detail* updates can be found at <http://www.maine.gov/mdot/contractors/publications/>.

The right is hereby reserved to the MaineDOT to reject any or all bids.

Augusta, Maine
November 20, 2024



KYLE A. HALL
DIRECTOR
BUREAU OF MAINTENANCE & OPERATIONS

SPECIAL PROVISION 102.7.3
ACKNOWLEDGMENT OF BID AMENDMENTS

With this form, the Bidder acknowledges its responsibility to check for all Amendments to the Bid Package. For each Project under Advertisement, Amendments are located at <http://www.maine.gov/mdot/contractors/> . It is the responsibility of the Bidder to determine if there are Amendments to the Project, to download them, to incorporate them into their Bid Package, and to reference the Amendment number and the date on the form below. The Maine DOT will not post Bid Amendments any later than noon the day before Bid opening without individually notifying all the planholders.

Amendment Number	Date

The Contractor, for itself, its successors and assigns, hereby acknowledges that it has received all of the above referenced Amendments to the Bid Package.

CONTRACTOR

Date

Signature of authorized representative

(Name and Title Printed)

MAINE DEPARTMENT OF TRANSPORTATION
CONTRACT AGREEMENT
TRANSPORTATION RELATED MAINTENANCE WORK

This CONTRACT is made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (“Department” or “MaineDOT”), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016, and _____ (**“Contractor”**) a corporation or other legal entity organized under the laws of the State of _____, with its principal place of business located at _____, with a mailing address of _____, and a telephone number of _____ .

The Vendor Customer Number of the Contractor is _____.

The following attachments are hereby incorporated into this Contract by reference:

Appendix A – Special Provision - Specifications of Work to be Performed

Appendix B – Special Provisions for State Funded Transportation Related Maintenance Work

The Department and the Contractor, in consideration of the mutual promises set forth in this Contract Agreement (hereinafter “Contract”) hereby agree as follows:

A. The Work.

The Contractor agrees to complete all work described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **Prequalification of On Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities, Statewide**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

B. Time.

This contract commences when executed, and expires on **December 31 , 2026** unless extended under the terms of this contract. At the Department's discretion and upon mutual agreement with the Contractor, the Contract may be extended for time and money, under all the terms of this contract, at bid prices for agreed periods of time up to approximately Two (2) additional years.

C. Price.

The original Contract amount is **Two Hundred Thousand Dollars and no cents (\$200,000)**. The Contract amount will be determined by the actual work authorized and performed and the prices included in Appendix A. The Maine DOT does not guarantee the use of any or all of the Contract amount.

D. Contract.

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition* as updated through advertisement, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices. It is agreed and understood that this Contract will be governed by the documents listed above.

E. Certifications.

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and certifications required or set forth in the Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

F. Contract Agreement.

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition*, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools,

equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor agrees to perform extra work, not described in Appendix A, which may be ordered by the Department, and to accept as full compensation the amount determined upon basis as provided in the contract documents.

Second: Contractor understands that Work may commence upon Contract Execution, unless provided elsewhere in this contract and that Work must be completed within the time limits given in this Contract.

Third: That this offer shall remain open for 30 calendar days after the date of opening of bids.

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

Fifth: Contractor further agrees to provide insurance as required by this Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby executes this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

Date

(Signature of Legally Authorized Representative
of the Contractor)

(Name and Title Printed)

G. Award.

Your offer is hereby accepted. This award consummates the Contract, and the documents referenced herein.

MAINE DEPARTMENT OF TRANSPORTATION

Date

By: Kyle A. Hall
Director
Bureau of Maintenance & Operations

MAINE DEPARTMENT OF TRANSPORTATION
CONTRACT AGREEMENT
TRANSPORTATION RELATED MAINTENANCE WORK

This CONTRACT is made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (“Department” or “MaineDOT”), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016, and _____ (**“Contractor”**) a corporation or other legal entity organized under the laws of the State of _____, with its principal place of business located at _____, with a mailing address of _____, and a telephone number of _____ .

The Vendor Customer Number of the Contractor is _____.

The following attachments are hereby incorporated into this Contract by reference:

Appendix A – Special Provision - Specifications of Work to be Performed

Appendix B – Special Provisions for State Funded Transportation Related Maintenance Work

The Department and the Contractor, in consideration of the mutual promises set forth in this Contract Agreement (hereinafter “Contract”) hereby agree as follows:

A. The Work.

The Contractor agrees to complete all work described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **Prequalification of On Call Bridge, Drainage, and Other Incidental Maintenance for Railroad Facilities, Statewide**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

B. Time.

This contract commences when executed, and expires on **December 31 , 2026** unless extended under the terms of this contract. At the Department's discretion and upon mutual agreement with the Contractor, the Contract may be extended for time and money, under all the terms of this contract, at bid prices for agreed periods of time up to approximately Two (2) additional years.

C. Price.

The original Contract amount is **Two Hundred Thousand Dollars and no cents (\$200,000)**. The Contract amount will be determined by the actual work authorized and performed and the prices included in Appendix A. The Maine DOT does not guarantee the use of any or all of the Contract amount.

D. Contract.

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition* as updated through advertisement, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices. It is agreed and understood that this Contract will be governed by the documents listed above.

E. Certifications.

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and certifications required or set forth in the Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

F. Contract Agreement.

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition*, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools,

equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor agrees to perform extra work, not described in Appendix A, which may be ordered by the Department, and to accept as full compensation the amount determined upon basis as provided in the contract documents.

Second: Contractor understands that Work may commence upon Contract Execution, unless provided elsewhere in this contract and that Work must be completed within the time limits given in this Contract.

Third: That this offer shall remain open for 30 calendar days after the date of opening of bids.

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

Fifth: Contractor further agrees to provide insurance as required by this Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby executes this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

Date

(Signature of Legally Authorized Representative
of the Contractor)

(Name and Title Printed)

G. Award.

Your offer is hereby accepted. This award consummates the Contract, and the documents referenced herein.

MAINE DEPARTMENT OF TRANSPORTATION

Date

By: Kyle A. Hall
Director
Bureau of Maintenance & Operations

CTM: _____

TEDOCS# _____

CSN _____

MAINE DEPARTMENT OF TRANSPORTATION
CONTRACT AGREEMENT
TRANSPORTATION RELATED MAINTENANCE WORK

This CONTRACT is made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (“Department” or “MaineDOT”), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and **ABC COMPANY** (“Contractor”) a corporation or other legal entity organized under the laws of the State of **ME**, with its principal place of business located at **123 ANY STREET, TOWN, ST 000000**, with a mailing address of **PO BOX XXX, TOWN, ST 00000**, and a telephone number of **(123)456-7890**.

The Vendor Customer Number of the Contractor is **VC000000000**.

The following attachments are hereby incorporated into this Contract by reference:

Appendix A – Special Provision - Specifications of Work to be Performed

Appendix B – Special Provisions for State Funded Transportation Related
Maintenance Work

The Department and the Contractor, in consideration of the mutual promises set forth in this Contract Agreement (hereinafter “Contract”) hereby agree as follows:

A. The Work.

The Contractor agrees to complete all work described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **Heating Services**, in **Regions 2, 3 & 4**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

B. Time.

This contract commences on December 15, 2018 or when executed, whichever is latest and expires on **December 15, 2019** unless extended under the terms of this contract. At the Department's discretion and upon mutual agreement with the Contractor, the Contract may be extended for time and money, under all the terms of this contract, at bid prices for agreed periods of time up to approximately four (4) additional years.

C. Price.

The quantities given in the Schedule of Items of the Bid Package will be used as the basis for determining the original Contract amount and that the amount of this offer is **(Place bid here in alphabetical form such as One Hundred Two dollars)** **\$ (repeat bid here in numerical terms, such as \$102.00)** .

The Maine DOT does not guarantee the use of any or all of the Contract amount.

D. Contract.

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition* as updated through advertisement, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices. It is agreed and understood that this Contract will be governed by the documents listed above.

E. Certifications.

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and certifications required or set forth in the Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

F. Contract Agreement.

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, *Standard Specifications, March 2020 Edition*, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools, equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor agrees to perform extra work, not described in Appendix A, which may be ordered by the Department, and to accept as full compensation the amount determined upon basis as provided in the contract documents.

Second: Contractor understands that Work may commence upon Contract Execution, unless provided elsewhere in this contract and that Work must be completed within the time limits given in this Contract.

Third: That this offer shall remain open for 30 calendar days after the date of opening of bids.

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

Fifth: Contractor further agrees to provide insurance as required by this Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby executes this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

(Print Date here)
Date

(Sign Here)
(Signature of Legally Authorized Representative
of the Contractor)

(Print Name Here)
(Name and Title Printed)

G. Award.

Your offer is hereby accepted. This award consummates the Contract, and the documents referenced herein.

MAINE DEPARTMENT OF TRANSPORTATION

Date

By: Brian T. Burne
Highway Maintenance Engineer
Bureau of Maintenance & Operations

THIS DOCUMENT MUST BE CLEARLY POSTED AT ALL CONSTRUCTION SITES FUNDED IN PART WITH STATE FUNDS

State of Maine Department of Labor - Bureau of Labor Standards
Augusta, Maine 04333-0045 - Telephone (207) 623-7906

Wage Determination - In accordance with 26 MRS §1301 et. seq., this is a determination by the Bureau of Labor Standards, of the fair minimum wage rate to be paid to laborers and workers employed on the below titled project.

2024 Fair Minimum Wage Rates -- Heavy & Bridge Statewide

Occupational Title	Minimum Wage	Minimum Benefit	Total
Brickmasons And Blockmasons	\$35.00	\$0.86	\$35.86
Bulldozer Operator	\$31.50	\$7.53	\$39.03
Carpenter	\$30.65	\$4.81	\$35.46
Cement Masons And Concrete Finisher	\$22.67	\$2.21	\$24.88
Commercial Divers	\$30.00	\$4.62	\$34.62
Construction And Maintenance Painters	\$24.50	\$5.24	\$29.74
Construction Laborer	\$25.00	\$3.75	\$28.75
Crane And Tower Operators	\$33.44	\$7.53	\$40.97
Crushing Grinding And Polishing Machine Operators	\$23.00	\$4.94	\$27.94
Drywall And Ceiling Tile Installers	\$26.20	\$10.62	\$36.82
Earth Drillers - Except Oil And Gas	\$24.16	\$2.53	\$26.69
Electrical Power - Line Installer And Repairers	\$38.93	\$8.67	\$47.60
Electricians	\$34.50	\$10.23	\$44.73
Elevator Installers And Repairers	\$68.38	\$45.29	\$113.67
Excavating And Loading Machine And Dragline Operators	\$30.00	\$3.24	\$33.24
Excavator Operator	\$30.00	\$4.32	\$34.32
Fence Erectors	\$24.00	\$2.05	\$26.05
Flaggers	\$20.00	\$0.50	\$20.50
Floor Layers - Except Carpet/Wood/Hard Tiles	\$27.00	\$6.21	\$33.21
Glaziers	\$37.00	\$6.60	\$43.60
Grader/Scraper Operator	\$23.00	\$1.99	\$24.99
Hazardous Materials Removal Workers	\$21.50	\$1.54	\$23.04
Heating And Air Conditioning And Refrigeration Mechanics And Installers	\$32.00	\$5.46	\$37.46
Heavy And Tractor - Trailer Truck Drivers	\$27.00	\$2.90	\$29.90
Highway Maintenance Workers	\$20.00	\$0.00	\$20.00
Industrial Machinery Mechanics	\$32.00	\$0.96	\$32.96
Industrial Truck And Tractor Operators	\$30.00	\$2.90	\$32.90
Insulation Worker - Mechanical	\$24.05	\$3.59	\$27.64
Ironworker - Ornamental	\$27.75	\$4.50	\$32.25
Light Truck Or Delivery Services Drivers	\$22.84	\$1.25	\$24.09
Millwrights	\$33.50	\$8.54	\$42.04
Mobile Heavy Equipment Mechanics - Except Engines	\$29.50	\$4.92	\$34.42
Operating Engineers And Other Equipment Operators	\$28.00	\$2.67	\$30.67
Paver Operator	\$25.30	\$3.73	\$29.03
Pile-Driver Operators	\$32.75	\$1.95	\$34.70
Pipelayers	\$28.50	\$4.89	\$33.39
Plumbers Pipe Fitters And Steamfitters	\$36.00	\$20.11	\$56.11
Pump Operators - Except Wellhead Pumps	\$31.49	\$32.08	\$63.57
Radio Cellular And Tower Equipment Installers	\$27.00	\$3.90	\$30.90
Reclaimer Operator	\$27.03	\$7.68	\$34.71
Reinforcing Iron And Rebar Workers	\$22.67	\$25.11	\$47.78
Riggers	\$31.25	\$7.68	\$38.93
Roofers	\$24.00	\$3.35	\$27.35
Screed/Wheelman	\$29.25	\$4.94	\$34.19
Sheet Metal Workers	\$27.38	\$6.74	\$34.12
Structural Iron And Steel Workers	\$30.00	\$6.98	\$36.98
Tapers	\$28.00	\$1.71	\$29.71
Telecommunications Equipment Installers And Repairers - Except Line Installers	\$28.33	\$6.08	\$34.41
Telecommunications Line Installers And Repairers	\$26.00	\$4.02	\$30.02
Tile And Marble Setters	\$27.75	\$6.73	\$34.48

Welders are classified as the trade to which welding is incidental (e.g. welding structural steel is Structural Iron and Steel Worker)


Apprentices – The minimum wage rates for registered apprentices are the rates recognized in the sponsorship agreement for registered apprentices working in the pertinent classification.

For any other specific trade on this project not listed above, contact the Bureau of Labor Standards for further clarification.

Title 26 §1310 requires that a clearly legible statement of all fair minimum wage and benefits rates to be paid the several classes of laborers, workers and mechanics employed on the construction on the public work must be kept posted in a prominent and easily accessible place at the site by each contractor and subcontractor subject to sections 1304 to 1313.

Appeal – Any person affected by the determination of these rates may appeal to the Commissioner of Labor by filing a written notice with the Commissioner stating the specific grounds of the objection within ten (10) days from the filing of these rates.

A true copy

Attest: 
Scott R. Cotnoir
Wage & Hour Director
Bureau of Labor Standards

Expiration Date: 12-31-2024
Revision Date: 1-3-2024

PREQUALIFICATION PROCEDURE

Contractors desiring to perform or bid on the Prequalification for On Call Railroad Maintenance must submit a properly completed Application and sign a contract unless one of the exceptions to prequalification listed below of this Procedure applies. The prequalification process will be open continuously.

All Contractors must be prequalified in accordance with the provisions of this Procedure to be eligible to be awarded a Contract, EXCEPT that such prequalification is not required if (1) the Contractor is contracted pursuant to a separate process specific to that project or (2) the Department waives the requirement for prequalification for good cause shown and in the best interest of the State.

The Contractor must honestly, accurately and completely supply all information requested in the Application. Applications will not be considered received until the Department has received a properly completed Application including all required supporting data. A Committee shall review all information provided in the Application. The Committee or its designees may (a) contact any person or entity necessary to verify and/or supplement any of the information requested by or provided in the Application and (b) review information from other published sources of industry information, information from transportation departments in other states, the Federal Highway Administration, and any other Significant information. Whenever the Committee determines that the nature or extent of the information provided in the Application is insufficient or indicates that the Contractor is not qualified, the Committee will, within ten (10) Business Days of receipt of the application, contact the Contractor to seek additional information and, if desired by the Contractor, to schedule an interview to discuss the specific reasons that have caused that preliminary determination. The Contractor will submit all additional information requested by the Committee.

The Committee will evaluate all the information provided or obtained as a whole on a pass-fail basis to determine whether the Contractor is responsible and qualified. In doing so, the Committee will use the following descriptive categories.

QUALIFIED: Sufficient information exists to determine that the Contractor is likely to perform the work in a timely manner using acceptable processes.

NOT QUALIFIED: The information demonstrates that it is unlikely that the Contractor can perform the work in a timely manner using acceptable processes.

Grounds for Determination of "Not Qualified"

A finding by the Committee based upon substantial evidence that any one of the following conditions exists shall be sufficient grounds, though not mandatory grounds, for an overall determination of "Not Qualified".

1. Unsatisfactory and/or insufficient Contractor experience, licensing or applicable knowledge and experience significantly below industry standards.
2. Safety record significantly below industry standards or a Worker's compensation Experience Modifier Rate exceeding 1.25.
3. Terminations, suspensions, defaults, disbarment, conviction of bid crimes, or other irregularities with respect to any federal, state, or local government or procurement agencies.
4. Civil rights or environmental record significantly below industry standards.
5. A pattern of unsupported claims.
6. Deceptive, evasive or fraudulent statements or omissions contained in the Application, made or omitted at any interview or hearing, or otherwise made to or omitted from the Department.
7. Other substantial deficiencies that are clearly below industry standards and that clearly demonstrate that the Contractor is "Not Qualified".

If the Contractor is found to be qualified, the Department will notify the Contractor of Prequalification. Once a Contractor has furnished Certificates of Insurance complying with the Standard Specifications, and any other pre-executions conditions are met, the Department may execute and award a contract. If the Department determines that the Contractor is not qualified, said Notice will also set forth the specific reasons therefore to the extent practical and no contract will be awarded.

Appeals and Definitions will be those described in the Maine Department of Transportation Contractor's Prequalification Procedure, Revision December 5, 2016.

RENEWAL PROCEDURE

Contractors may submit a request for prequalification renewal and a new contract no earlier than 30 days prior to contract expiration. The request for prequalification renewal shall be accompanied by a newly completed prequalification form including any changes to data from the prior application. The Department will determine if the Contractor is qualified. A Contractor shall furnish Certificates of Insurance complying with the Standard Specifications prior to contract award.

If the Contractor is found to be qualified, the Department will notify the Contractor of Prequalification. The Department may award a contract once pre-executions conditions are met.

[Name]

1. Basic Information

Name of Contractor: _____

Contact Person(s): _____

Telephone No: _____ Cell No: _____ Fax No: _____ E-mail: _____

Mailing Address:

Physical Address: _____

Vendor Customer No.: _____

2. Organizational Structure & History

The Contractor is duly organized under the laws of the State of _____.

The Contractor has the following organizational structure.

() individual () corporation () partnership
() limited liability company () joint venture () other: _____

Please list all Predecessor and Related Entities below.

If organized in any state other than Maine or in a foreign country, are you in compliance with all laws and regulations necessary to legally do business in the State of Maine? (Example: filings with the Maine Secretary of State.) YES _____ NO _____

3. Services and Qualifications

Counties in which Contractor is willing to perform work (Check all that apply)	
<input type="checkbox"/>	Androscoggin
<input type="checkbox"/>	Aroostook
<input type="checkbox"/>	Cumberland
<input type="checkbox"/>	Franklin
<input type="checkbox"/>	Hancock
<input type="checkbox"/>	Kennebec
<input type="checkbox"/>	Knox
<input type="checkbox"/>	Lincoln
<input type="checkbox"/>	Oxford
<input type="checkbox"/>	Penobscot
<input type="checkbox"/>	Piscataquis
<input type="checkbox"/>	Sagadahoc
<input type="checkbox"/>	Somerset
<input type="checkbox"/>	Waldo
<input type="checkbox"/>	Washington
<input type="checkbox"/>	York

Contractor will perform work in compliance with the following:

State Provisions only YES _____ NO _____

State & Federal Provisions YES _____ NO _____

Qualified under the FRA's Roadway Worker Protection (RWP) regulation to work on active rail lines.

YES _____ NO _____

Using the Contractor's OSHA 300 Log and statements provided by applicable insurance, provide your company's Worker's Compensation Experience Modification Rate (EMR) for the past (3) three years. If the Contractor does not have an EMR, attach explanation detailing why the Contractor is exempt.

Summary of Contractors Experience: With respect to each of the following Project Types, list the approximate number of years of experience that the Contractor has as a prime contractor or as a subcontractor with primary responsibility.

Part 1 - Railroad Maintenance and Repair Services

Areas of Expertise	Years of Experience
Railroad Track Construction and Rehabilitation to AREMA Standards.	
<input type="checkbox"/> Production tamping and regulating	
<input type="checkbox"/> Spot tamping.	
<input type="checkbox"/> Production tie installation.	
<input type="checkbox"/> Maintenance/repair - tie installation.	
<input type="checkbox"/> Production repair of jointed rail.	
<input type="checkbox"/> Maintenance/repair of jointed rail.	
<input type="checkbox"/> Production continuously welded rail (CWR), including anchoring.	
<input type="checkbox"/> Maintenance/repair of CWR, including anchoring.	
<input type="checkbox"/> Production road surfacing.	
<input type="checkbox"/> Maintenance/repair – road surfacing.	
<input type="checkbox"/> Maintenance/repair – welding, frogs, switch points, and rail end batter.	
<input type="checkbox"/> Thermite welding of CWR joints.	
<input type="checkbox"/> Tie installation and removal.	
<input type="checkbox"/> Switch construction and installation.	
<input type="checkbox"/> Ditching.	
<input type="checkbox"/> Brush cutting by hand.	
<input type="checkbox"/> Hi-rail mechanical brush cutting.	
<input type="checkbox"/> Culvert replacement.	
Railroad Buildings	
<input type="checkbox"/> Railroad building repair.	
Railroad Bridges	
<input type="checkbox"/> Steel repair/rehabilitation to AREMA Standards.	
<input type="checkbox"/> Accurate field measurement of the dimensions of existing members and their features.	
<input type="checkbox"/> Acquisition and modification of standard steel members (Bars, angles, I-beams, etc.) to meet specified dimensions, bolt holes, etc.	
<input type="checkbox"/> Removal of rivets, replacing with bolts.	
<input type="checkbox"/> Steel cutting.	
<input type="checkbox"/> Welding of steel (AWS D1.5 Certified under AREMA standards).	

<input type="checkbox"/> Heat straightening of Steel members	
<input type="checkbox"/> Construction of falsework to allow steel repair/rehabilitation to take place.	
<input type="checkbox"/> Bridge approach surfacing.	
<input type="checkbox"/> Lifting and reseating of bridge sections.	
<input type="checkbox"/> Replacement of open deck bridge timbers, including temporary removal and reinstallation of track.	
<input type="checkbox"/> Steel bearing repair.	
<input type="checkbox"/> Anchor bolt replacement.	
<input type="checkbox"/> Timber retaining wall replacement.	
<input type="checkbox"/> Repointing of masonry abutments and piers (granite block or rough cut stone).	
<input type="checkbox"/> Concrete crack repair – epoxy injection.	
<input type="checkbox"/> Concrete patch repair (spall, cracking).	
<input type="checkbox"/> Small concrete replacements less than 20 ft ³ (Backwalls, bearing seats)	
<input type="checkbox"/> Repair scour/undermining – Fill or armoring.	
Railroad Signals	
<input type="checkbox"/> FRA certified to establish and maintain crossing circuits, crossing signals, and gates.	
<input type="checkbox"/> FRA certified to establish and maintain block signals.	

Railroad Maintenance Services

- ☐ Provide a written statement of past services.

Able to perform all construction and repair services up to _____ (0-50+) miles from the nearest crossing with a road.

<u>Part 2 – Observation of Defects*</u>	<u>Years of Experience</u>
<input type="checkbox"/> Able to identify track defects and provide prompt written reports on these defects during track maintenance and repair or when given assignment to observe condition.	
<input type="checkbox"/> Able to identify building defects and provide prompt written reports on these defects during building maintenance and repair or when given assignment to observe condition.	
<input type="checkbox"/> Able to identify bridge defects and provide prompt written reports on these defects during bridge maintenance and repair or when given assignment to observe condition.	

* Observation of defects will be limited to providing opinion of condition, treatment, and monetary estimate of repair. Should inspection reveal a deficiency that requires the services of a Professional Engineer, the vendor will provide field information to the Department and Engineering Services will be secured outside of this contract.

Railroad Observation of Defects Services

- ☐ Provide a written statement of past services.

Notes:

Schedule of Items

Equipment	Type. Owned or Rented?	Rate (USD/day)
Scissor lift.		
Flatbed truck.		
Hi-rail excavator for culvert & ditching work.		
Tie replacement hi-rail equipment.		
Hi-rail bucket truck / UBIT.		
Hi-rail concrete mixer.		
Hi-rail crane.		
Hi-rail flatbed truck.		
Ballast transporting and placement equipment.		
Tamper		
Ballast regulator		
Lull forklift		
Generator/air tools		
Brush mulcher		
Material handler		
Excavator		
Dump truck		

Include any additional equipment rates.

Notes:

Material	Unit of Measure	Amount
Markup on material – steel	Market price + ____%	
Markup on material – concrete	Market price + ____%	
Markup on material – other	Market price + ____%	

Include any additional material rates.

Notes:

Labor	Rate (USD/hr)
Laborer	
Equipment Operator	
Supervisor	

Include any additional labor rates.

Note the required level of experience outlined in Appendix A.

Notes:

Provide a list of qualified personnel employed by the Contractor. Include any relevant certifications and list three relevant projects for each.

Most Recently Completed Contracts. Please provide the following information regarding the last six contracts completed by the Contractor. Please list in reverse chronological order (most recently completed project first, next most recently completed project, etc.). [Please feel free to provide this information on attached sheets in another format as long as it contains all the information requested.]

Contract Amount	Project Type & Location	Month/Year Completed	Name/Address Contact Person & Tel. # of Owner

Contracts in Progress. Please provide the following information regarding all contracts currently in progress, in descending order of contract amount. [Please feel free to provide this information on attached sheets in another format as long as it contains all the information requested.]

Contract Amount	Project Type & Location	% Completed	Name/Address Contact Person & Tel. # of Owner

Provide an alphabetical listing of all states in which the state Department of Transportation (or analogous agency) has awarded the Contractor (or any Predecessor Entities and Related Entities) a contract during the last five years.

- | | |
|----------|-----------|
| 2. _____ | 6. _____ |
| 3. _____ | 7. _____ |
| 4. _____ | 8. _____ |
| 5. _____ | 9. _____ |
| 6. _____ | 10. _____ |

[Attach additional sheets as necessary.]

4. Insurance

Can your firm provide proof of insurability in the following categories:

1. Commercial General Liability (CGL) of \$1,000,000.00 per occurrence, and \$2,000,000.00 in the aggregate.
2. Automobile of \$1,000,000.00 per occurrence.
3. Workers Compensation in accordance with the requirements of the laws of the State of Maine.
4. Owner & Contractors Protective Liability \$1,000,000.00 per occurrence and \$2,000,000.00 in the Aggregate.
5. Railroad Protective Liability of \$1,000,000.00 per occurrence as needed.

A Certificate of insurance must be submitted to the Department prior to execution of a contract. MaineDOT must be named additional insured on the CGL policy.

**5. Termination, Suspension, Default, Debarment, Claims, Crimes,
Civil Rights, Environmental Record, Safety**

	YES	NO
Within the last five years, or since your last Prequalification Application has a contract of the Contractor (or any Predecessor Entities or Related Entities) been terminated or suspended for cause, been considered in default of a contract that was not cured within the time frame allowed by the contract?		
Within the last 5 years, or since your last Prequalification Application has the Contractor (or any Predecessor Entities or Related Entities) been debarred for any reason by any federal, state, or local government or procurement agencies or refrained from bidding for any reason, such as suspension or agreement not to bid, or as part of the settlement of a Dispute of any type with any federal, state, or local government or procurement agencies?		
Within the last 10 years, has the Contractor (or any Predecessor Entities or Related Entities), or any officers, owners, or Key Personnel of the same ever been indicted on, convicted of, or plead or consented to a violation of a bid crime including bid collusion or any other crime involving fraud or knowing misrepresentation?		
Within the last 5 years, or since your last Prequalification Application has the Contractor (or any Predecessor Entities or Related Entities) had any findings and/or rulings of sexual harassment, discrimination, or other civil rights violations against it?		
Within the last 5 years, or since your last Prequalification Application has the Contractor (or any Predecessor Entities or Related Entities) been found to be in violation of any federal, state or local environmental law or regulation in an administrative, civil or criminal proceedings.		
Within the last 5 years, or since your last Prequalification Application has the Contractor (or any Predecessor Entities or Related Entities) sustained any work related fatal accidents or received an OSHA (or state OSHA) citation?		
If the answer to any of the questions is YES, provide full details, including a summary of your position, on attached sheets.		

5. Certifications

By signing below, the person signing below hereby certifies and swears, as follows.

1. I have personal knowledge of all the information contained in this Application OR I am responsible for the accuracy of all such information
2. The information contained in this Application is true and complete.
3. I hereby authorize the Department to contact any person or entity necessary to verify or supplement any of the information requested by or provided in this Application without liability, and I hereby further authorize any person or entity contacted to provide any and all information requested without liability.
4. The Contractor has read, understands, and agrees to all terms of the Prequalification Procedure and this Application.
5. I am duly authorized by law and by the Contractor to sign this Application on behalf of the Contractor.

Date

CONTRACTOR

Witness

[Signature]

By: _____
[Name and Title Printed]

SPECIAL PROVISION
SECTION 108
PAYMENT
(Invoices and Payment)

The Contractor shall submit an itemized invoice to the Department for services monthly and at the completion of the Work or as otherwise noted in the Contract documents for approval and payment.

At a minimum, invoices shall be on a Contractor's letterhead and shall include the following information:

- Contractor name, address & Contract Number
- Invoice Date & Number
- Period during which Work was performed or Dates of Service
- Description and Location of Work or Service
- Quantities at the Prices contained in the Contractor's Bid
- Percent complete of each Item priced at the Unit cost for each Item at the Unit Prices contained in the Contractor's Bid
- Extra Work agreed to by written Contract Modification
- Total amount due

The Department will make payments based upon approved complete and correct invoices for accepted Work invoiced at bid prices. No such payment will be made if, in the judgment of the Department, the Work is not in accordance with the provisions of the Contract.

Payments to the Contractor shall be full compensation for furnishing all labor, equipment, materials, services, and incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or execution of the Work. The Contractor shall pay all taxes, charges, fees, and allowances. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract. Most items are exempt from Maine sales tax. The Contractor shall Bid in accordance with the Maine statutory exemption from sales tax. No payments due the Contractor will be adjusted for inflation. No interest shall be due and payable on any payment due the Contractor. The Department may require that the Contractor submit backup documentation including copies of receipts, invoices, and itemized payments to Subcontractors.

The Department may withhold payments claimed by the Contractor on account of:

- A. Incomplete, Inaccurate or Incorrect Invoices,
- B. Defective Work or non-conforming Work,
- C. Damages for Non-conforming, Defective or Unauthorized Work or Equipment,
- D. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor,
- G. Regulatory non-compliance or enforcement,
- H. Failure to submit Documentation
- I. All other causes that the Department reasonably determines negatively affect the State's interest.
- J. Failure to provide the Department the opportunity to inspect the Work,
- K. Substantial evidence that the Project cannot be completed for the unpaid balance,
- L. Substantial evidence that the amount due the Department will exceed the unpaid balance,
- M. Repetitive Breakdowns
- N. Equipment rejected due to condition

The Department may hold, temporarily or permanently, retainage as needed to assure timely Completion of the Work and payment of all Subcontractors and Suppliers in Conformity with the Contract.

The Contractor shall deliver the 106 Memo and the Materials Certification, as applicable, to the Department within 30 Days of the date of the notification that the Physical Work is Complete. Within 75 Days of the receipt of these documents, the Department will advise the Contractor in writing of the Final Quantities and any damages to be assessed for the Project. The Contractor shall resolve any Project issues that remain and provide the All Bills Paid and Request for Final Payment Letters to the Department within 30 Days. Completion occurs when the Contractor has finished all Work pursuant to the Contract, including Delivery and acceptance of all Documentation. Completion does not mean substantial Completion. Completion also does not mean Completion of Physical Work. The Department will make Final Payment, including the release of all remaining retainage following Completion, when the Work is complete and has undergone a successful final inspection and all documentation is complete.

The Acceptance by the Contractor of the final payment, as evidenced by cashing of the final payment check, constitutes a release to the Department from all claims and liability under the Contract. Upon Final Acceptance, the Contractor is released from further obligation, except for warranty obligations provided for in this Contract.

The Department will notify the Contractor in writing that the Physical Work is Complete and in Conformity with the Contract and that the Project will be Finally Accepted when documentation required is received from the Contractor. The Contractor shall deliver the Closeout documentation to the Department within 30 Days of the date of the notification that the Physical Work is Complete. Liquidated Damages will cease upon the physical completion of the Work. Within 75 Days of the receipt of these documents and Final Acceptance by the Department, the Department will advise the Contractor in writing of the Final Quantities and any damages to be assessed for the Project. The Contractor shall resolve any Project issues that remain and provide the All Bills Paid and Request for Final Payment Letters to the Department within 30 Days. Completion occurs when the Contractor has finished all Work pursuant to the Contract, including Delivery and acceptance of all Documentation. Completion does not mean substantial Completion. Completion also does not mean Completion of Physical Work. The Department will make Final Payment, including the release of all remaining retainage following Completion, when the Work is complete and has undergone a successful final inspection and all documentation is complete.

APPENDIX A
SPECIAL PROVISION
SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor _____

Basis of Award and Assignments (goes with Assignment or Assignment Letter Contracts)

The Department may award contracts to all responsive, responsible bidders that have the ability to respond in a timely manner and are experienced/qualified and meet “Contractor requirements”.

The dollar amount of this Contract does not guarantee that the Department will assign Work for any or all of the total amount.

The Department and each responsive bidder may enter into a Contract that will obligate each Contractor to perform work at prices listed by the bidder in rates submitted in the Contractor's Prequalification Application, depending upon the needs of the Department according to the following terms. Work will be assigned under these contracts according to the following process: The Contractor with the lowest bid with the appropriate experience and capabilities for the particular Assignment shall have first option to enter into a contract to perform work pursuant to an Assignment Letter. If this Contractor is unable to accept the Assignment, respond in the necessary and appropriate time for the Assignment, complete the Assignment in the allotted time, or does not have the equipment, experience or ability to complete the Assignment, then the Contract Administrator will contact the firm that is estimated to have the next lowest bid to see if that Contractor will accept the Assignment and subsequent Contractors in descending order of the bid price, until a Contractor accepts the Assignment. The Department will estimate the cost for a particular Assignment based on the individual unit bid prices for the total quantity of estimated work in that Assignment. The Department and the Contractor shall mutually agree to quantities and schedules prior to the Contractor beginning the Assignment. Contractors are not required to accept all assignments offered.

Upon mutual agreement, an Assignment *Letter* stating the nature of the Work and any time constraints will then be sent to the successful contractor. The Work described in this *letter* will become part of the Contract.

Not all Railroad Maintenance shall be done under these contracts. Some work shall be done by the Department and work may be done by other means not associated with this solicitation, pursuant to a separate process specific to a project such as portions of a

building construction project, and projects included in the Capital Work Plan or Building Program. The dollar amount of this Contract is in no way a guarantee that the Department will Assign Work for any or all of the total amount.

In the case an emergency arises for which the response time does not allow for the preparation of a bid solicitation, that the Department has determined the work required can be best addressed using one of these contracts, the Department shall contact one of the Contractors prequalified and under Contract for Railroad Maintenance. The Department shall select a Contractor to call based on an evaluation of rates, experience and equipment, geographic proximity, response time and determination of what is in the best interest of the State. The Department and the Contractor shall mutually agree to the price, scope and schedule prior to the Contractor beginning the Assignment. This work shall become part of the Contract.

Default and Termination of Assignment The Contractor is in Default of the Assignment if the Contractor:

- A. Fails to adhere to obligations of the Assignment or Contractor Requirements.
- B. Fails to answer or reply to the Department within ½ hour of emergency notification of work.
- C. Fails to commence work or be onsite within 3 hours after accepting an emergency assignment.
- D. Fails to provide sufficient labor, Equipment, or Materials to assure the timely Completion of the Assignment.
- E. After work on assignment has commenced, fails to continuously work on assignment without Department approval.
- F. Performs Defective Work neglects or refuses to repair or correct Unacceptable Work when directed by the Department.
- G. Continues to perform Work after the Department directs that Work be stopped.

If Default and Termination of Assignment occurs, the Department may give written Notice of Default and Termination of Assignment to the Contractor. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract. In this event, the Department may award the Assignment to another Contractor for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Assignment in an acceptable and timely manner.

Upon receiving a 2nd Default and Termination of Assignment, the Department may, in addition, consider this 2nd notification as a Default and Termination of Contract 2nd Incident written warning.

Default and Termination of Contract The Contractor is in Default of the Contract if the Contractor:

- A. Fails to provide labor, Equipment or Materials specified in the Assignment or Contract,
- B. Fails to perform the Work with sufficient labor, Equipment, or Materials to assure the timely Completion of the Assignment,
- C. Fails to perform Work when specified in the Assignment.
- D. Performs Defective Work neglects or refuses to repair or correct Unacceptable Work when directed by the Department;
- E. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency that could affect the Work in any way,
- F. Discontinues the Work without the Department approval,
- G. Continues to perform Work after the Department directs that Work be stopped,
- H. In any other manner, fails to perform the Work in Substantial Conformity with any material provision of the Contract.

Failure by the Contractor to perform the Work when required or to substantially meet other contractual requirements will result in the following actions:

1st Incident: If the Contractor does not take corrective action for a non-emergency Assignment within 2 days upon receipt of verbal warning, for an emergency Assignment within 3 hours after notification the Department will issue a written warning.

2nd Incident: The Department will issue a written warning.

3rd Incident: The Department may (A) give written Notice of Default to the Contractor and immediately terminate the Contract by written Notice of Termination, or (B) take prosecution of the Work away from the Contractor without violating the Contract (C) for if an emergency will count as 1st incident and no time to cure.

If Default occurs, the Department may give written Notice of Default to the Contractor. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract. In this event, the Department may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Assignment in an acceptable and timely manner. The Department will pay for all Accepted items of Work as of the date of Termination at agreed upon prices.

Contractor's Safety Program If a copy of the Contractor's Safety Plan is not on file with the Contracts Section of the Department, the Contractor must submit, prior to Contract award, a project specific Safety Plan to the Department. The Contractor's Safety Plan shall identify and address job hazards of the expected contract work and shall comply with all applicable federal, State, and local laws governing safety including all applicable laws and regulations of OSHA

Insurance The Contractor shall supply proof of insurance as detailed in Standard Specifications, Section 110 – Indemnification, Bonding and Insurance before this Contract will be signed by the Department.

Railroad Protective Liability The Contractor shall carry Railroad Protective Liability insurance in an amount not less than \$1,000,000.00. The Contractor will be required to provide proof of Railroad Protective Liability Insurance within 7 (seven) days of accepting assignment, depending on the needs of the Department, or a set deadline at the time of Assignment.

Wage Rates If a construction assignment exceeds \$50,000, State Wage Rates will be included in the solicitation and apply to that Work. Federal Wage Rates do not apply to this Work.

SPECIAL PROVISIONS
ADDITIONS AND REVISIONS TO STANDARD SPECIFICATIONS

SPECIAL PROVISION SECTION 101
CONTRACT INTERPRETATION

101.2 Definitions Add the following:

“MaineDOT The Department of Transportation of the State of Maine, as established by 23 MRSA §4205 et seq. for the administration of Highway, Bridge, and other public Works; acting through the Commissioner and his/her duly authorized representatives.”

101.2 Definitions Apparent Successful Bidder Delete the section in its entirety and replace with the following:

“All Bidders with the responsive responsible Bids as determined by the Department. A responsive responsible Bidder that is Awarded the Contract. The Department may not execute the Contract with the Apparent Successful Bidders if a) the Apparent Successful Bidder fails to comply with all applicable pre-Award conditions or other pre-execution requirements of the Contract or b) if the Department chooses not to Award a Contract.”

101.2 Definitions Add the following:

“Contract Agreement form The Contract Agreement, Offer and Award, the Maine Department of Transportation Contract Agreement Transportation Related Maintenance Work, the Maine Department of Transportation Contract Agreement to Purchase Supplies, Materials and/or Equipment for a Specific Project, Contract Agreement to Purchase Materials and/or Equipment for a Project and Related Work, the Maine Department of Transportation Private Equipment Rental Agreement – with an Operator, the Maine Department of Transportation Private Equipment Rental Agreement – without an Operator, or other contract agreement contained in the bid documents.”

101.2 Definitions Contract Completion Date Delete the entire section and replace with the following:

“The required completion date of all Work pursuant to the Contract, except warranty work. The Contract Completion Date is usually on the Contract form.”

101.2 Definitions Contract Execution Delete the entire section and replace with the following:

“Execution of the Contract by the Commissioner or their authorized agent by signing the Contract form which action, upon written notification to the Contractor, forms a Contract as provided in Section 103.8 - Execution of Contract by Department.”

101.2 Definitions Contractor Delete the entire section and replace with the following:

“After the Department has executed the Contract by cosigning the Contract form provided in the Bid Documents, previously signed by the successful bidder, the Successful Bidder or the successful Proposer in a best value type of Contract becomes the Contractor. The Contractor will be the single point of responsibility for all Contract obligations to the Department. The Contractor shall be an independent Contractor with respect to the Department and shall not be an employee, agent, or representative of the Department. Alternatively, “Contractor,” with a lower case “c,” may mean a firm engaged in construction Work.”

101.2 Definitions Successful Bidder Delete the section in its entirety and replace with the following:

“All responsive, responsible bidders to whom the Department intends to award the Contract. This status is evidenced by a “Notice of Intent to Award” Letter sent to the Successful Bidders.”

SPECIAL PROVISION SECTION 102 BIDDING

102.6 Bid Guaranty Delete the entire section 102.6.

102.7.1 Location and Time Delete the entire section and replace with the following:

“The Bidder must Deliver its Bid and Bid Guaranty in a sealed envelope to the exact location and before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment. The sealed envelope must be labeled with the Bidder's name, the Project or Work location, WIN (if applicable) and/or Title, and the words “Bid Enclosed”. As a minimum, the Bidder will submit a Bid Package consisting of the Notice to Contractors, the completed Acknowledgement of Bid Amendments form, the completed Schedule of Items, 2 copies of the completed Contract form, and any other Certifications or Bid Requirements listed in the Bid Book. For a related provision, see Section 102.11 - "Bid Responsiveness".

102.9 Bid Opening Delete the section in its entirety and replace with the following:

“Bids will be opened and publicly read at the time and place specified in the Notice to Contractors or any applicable Bid Amendments. The Department will read only the names

of the Bidders. No other information will be made available prior to evaluation and award notification. Unit and lump sum prices are available for inspection by the Bidders immediately after Award. All Bids shall be sequestered until notification of award by the contracting agency after which time they become public record.

If, after the scheduled opening, the Department determines that there is not sufficient coverage of On-Call Services of the entire area being bid on, the Department may schedule a second bid opening date which extends the advertisement period of this Contract. Contractors will be notified of the new opening date by the normal Bid Amendment process. If the Bid Opening date is extended, any Bidders that have previously submitted Bids may choose **to** revise or **not to** revise their Bids. If the Bidder chooses to revise their Bid, they must resubmit a complete Bid Package which shall include a Bid and all other documents required in the Bid Documents and the original Bid will be returned to the Bidder. The Bid Package with the latest (newest) date shall replace all previously submitted packages.

The public reading of a Bid does not constitute a determination by the Department of whether the Bid is responsive or of whether the Bidder is responsible, though the Department may refuse to read Bids that are obviously non-responsive. Accordingly, the Department may reject a Bid as non-responsive and/or determine a Bidder is not responsible or ineligible to Bid even if that Bidder's Bid is read at Bid Opening."

102.11.1 Non-curable Bid Defects Revise the item on the list of non-curable Bid Defects for which the Department will reject Bids as non-responsive that reads "The Bid is not signed by a duly authorized representative of the Bidder." by replacing it with the following:

"The Bid is not signed by a duly authorized representative of the Bidder.

- Properly submitted electronic bids meet this requirement.
- Paper bids must include either (1) one or more signed copies of the Contract Agreement form or (2) a signed copy of the Schedule of Items."

102.11.1 Non-curable Bid Defects Revise this subsection by removing the words "The unit price and bid amount is not provided or a lump sum price is not provided or is illegible as determined by the Department." and replacing it with the following:

"The unit price and bid amount is not provided if (1) the item quantity is not one or lump sum or, (2) the lump sum contract price is not provided or, (3) the unit price, bid amount or lump sum price is illegible as determined by the Department."

102.11.2 Curable Bid Defects Revise the section by replacing it with the following:

"Unless the Department waives a curable Bid defect, the Bidder must cure, within the time stated in the written notice by the Department, but not less than 24 hours, all other Bid

Defects not listed in Section 102.11.1 - Non-curable Bid Defects that are identified by the Department. Failure to cure such Defects within said time may result in forfeiture of the Bidder's Bid Guaranty. Upon such failure, the Department may take any action in the best interests of the Department, including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

Such curable Bid Defects include, but are not limited to, the following.

The Bidder signs only one of the Contract Agreement Offer & Award forms.

Missing total sum of the items provided in the Schedule of Items.

The prices or signatures on the Bid or Bid Guaranty are not in ink or other non-erasable substance.

Failure to acknowledge Receipt and consideration of all Bid Amendments.

The Bid includes only one signed Contract Agreement form.

The Bid does not include a signed Contract Agreement form but does include a signed Schedule of Items.

If a submitted bid contains any additional conditions or alternate bidding language, the Bidder may cure the defect by removing all conditions and alternate language or the Department will reject the bid as non-responsive.

All other Defects that do not create a significant question as to the Bidder's total Bid amount or the Bidder's ability to complete the Work within the Contract Time or by the Contract Completion Date as determined by the Department."

SPECIAL PROVISION SECTION 103 AWARD AND CONTRACTING

103.1.1 Unit Prices Govern Add the following at the end of the paragraph:

"If the item quantity is one and either a unit price or bid amount is not provided, the unit price or bid amount omitted shall be determined mathematically by the Department."

103.4 Notice of Award Delete the section in its entirety and replace with the following:

"The Department has 30 Days following Bid Opening to Deliver a written Notice of Intent to Award and request a payment bond, performance bond, insurance bond, special certifications, and other information from the Apparent Successful Bidders. If

prequalification is required and an Apparent Successful Bidder is not prequalified at the time of Bid Opening, the Department shall have 15 days from the successful completion of the Prequalification process or 30 days following Bid Opening; whichever is longer. Once these pre-execution conditions are met, the Department will execute the Contract and notify the Contractor of the award with a written Notice of Award. If a Notice of Award is not sent within 30 days of receipt of the proper bonds, insurance, and other pre-award requirements, an Apparent Successful Bidder may withdraw its Bid without forfeiture of its Bid Guaranty or Bidding eligibility. The Notice of Intent to Award will set forth and/or reference the conditions that the Bidder must fulfill before Contract Execution. If the Department and an Apparent Successful Bidder agree, an extension beyond the 30 days of the Bid and Bid prices may occur and the Bid remains viable. For a related provision, see Section 103.5.”

103.5 Award Conditions Replace the first paragraph with the following:

“The Apparent Successful Bidder must provide and/or perform all of the items listed in this Section 103.5 within 14 Days of Receipt of the Notice of Intent to Award. Unless indicated otherwise, all items must be Delivered to the Department’s Bureau of Maintenance & Operations.”

103.5.1 Performance and Payment Bonds Delete the entire section 103.5.1.

103.5.4 Execution of Contract By Bidder Delete the entire section and replace with the following:

“The properly completed and signed Contract form provided with the Bid constitutes the Bidder’s offer. Once the Department has received the bonds (if applicable), insurance, and any other pre-award items required, the Department will sign and execute the Contract. The point of Contract execution is when the Contractor receives written notice that the contract has been signed by the Department and executed.”

SPECIAL PROVISION SECTION 104 GENERAL RIGHTS AND RESPONSIBILITIES

104.3.8A. Federal Wage Rates and Labor Laws Delete the entire section 104.3.8A. Federal Wage Rates do not apply to this work.

104.3.8B State Wage Rates and Labor Laws The State Wage Rates enclosed apply to this work. Federal Wage Rates do not apply to this work.

SPECIAL PROVISION SECTION 105
GENERAL SCOPE OF WORK

105.2.2 Health and Safety Plan Delete the entire section and replace with the following:

“The Contractor has the authority and responsibility to ensure compliance with all applicable federal, State, and local laws governing safety, health, and sanitation including all applicable laws and regulations of OSHA. The Contractor shall comply with these laws and regulations and ensure compliance by its subcontractors.

The Contractor shall provide all safeguards, safety devices, and protective Equipment and take all other action that is necessary to continuously and effectively protect the safety and health of all persons from hazards related to the Work.”

SPECIAL PROVISION SECTION 109
CHANGES

109.1.2 Substantial Changes to Major Items Delete the entire section 109.1.2.

SPECIAL PROVISIONS
FOR STATE FUNDED TRANSPORTATION RELATED MAINTENANCE WORK

1. **BENEFITS AND DEDUCTIONS** If the Contractor is an individual, the Contractor understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Contractor further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Contractor for his/her Income Tax records.

2. **INDEPENDENT CAPACITY** In the performance of this Contract, the parties hereto agree that the Contractor, and any agents and employees of the Contractor shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

3. **DEPARTMENT'S REPRESENTATIVE** The Contract Administrator shall be the Department's representative during the period of this Contract. The Contract Administrator has authority to curtail Work if necessary to ensure proper execution of the Contract, to take actions needed to assure that the Contractor's Work conforms with the Contract, to decide questions regarding quality and acceptability of Work, to suspend Work, to reject Unacceptable or Unauthorized Work and to refuse to approve Progress and Final Payments until Unacceptable or Unauthorized Work is corrected. The Contract Administrator shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Contractor. Unless authorized by the Contract Administrator, other Departmental employees are not authorized to alter or waive the provisions of the Contract or to issue instructions contrary to the Contract.

The Department has the authority to inspect all Materials and every detail of the Work. The Contractor shall provide the Department with safe access to all portions of the Work in Conformity with all applicable OSHA requirements. The Contractor shall furnish the Department with all information and assistance required to make a detailed inspection.

4. **CONTRACT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Contractor shall be submitted to the Department's Project Manager who is designated as the Contract Administrator on behalf of the Department for this Contract, except where specified otherwise in this Contract.

5. **CHANGES IN THE WORK** The Department shall have the right to alter the nature and extent of the Work as provided in the Contract, the Contract Amount being adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of its obligations under this Contract because of the inability of the parties to agree on an adjustment or adjustments. Any changes to the Contract that affect scope, compensation, time, quality, or other Contract requirements shall be by written Contract Modification, signed by both parties.

6. **SUBCONTRACTS** The Contractor is responsible for assuring that its subcontractors have sufficient skill and experience to perform the pursuant to the Contract. The Contractor is responsible for subcontractors that it employs and for coordinating and managing its subcontractors. The Contractor agrees to indemnify, defend, and hold harmless MaineDOT from and against all claims and causes of action arising out of any act or omission of Contractor's subcontractors, their agents, representatives, and employees. The Contractor agrees to indemnify the MaineDOT and hold it harmless from any claims asserted by, against or on behalf of Contractor's subcontractors. Included in this release is the

Contractor's agreement to waive any claims against MaineDOT to recover losses allegedly suffered by a subcontractor. If Work under this Contract is performed pursuant to subcontracts, the Contractor's obligations are not diminished and the Contractor remains responsible for all Work under the Contract.

7. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of the Contract shall in any case release the Contractor of its liability under this Contract.

8. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

- b. The Contractor shall, in all solicitations or advertising for employees placed by or on behalf of the Contractor relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
- c. The Contractor shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Contractor shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of Work to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

- g. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. **EMPLOYMENT AND PERSONNEL** The Contractor shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis pursuant to this Contract any personnel who are or have been at any time during the period of this Contract in the employ of the State of Maine, except regularly retired employees, without the written consent of the Department. Further, the Contractor shall not engage on this project on a full-time, part-time or other basis during the period of this Contract any retired employee of MaineDOT who has not been retired for at least one year without the written consent. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State of Maine at the time this Contract is executed or any time thereafter shall be admitted to any share or part of this Contract or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Contract is executed or at any time thereafter shall be admitted to any share or part of this Contract or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Contractor or any affiliate of the Contractor, without the written consent of the Department. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **WARRANTY OF NO COLLUSION** The Contractor hereby certifies that it did not, directly or indirectly, enter into any agreement, participate in any collusion or otherwise take any action in restraint of competitive bidding in connection with this Contract. For breach or violation of this warranty, MaineDOT shall have the right to annul this Contract without liability. Further, MaineDOT shall have the right to recover the full amount of such fee, commission, gift, or the value of consideration that may have been transferred by the Contractor in violation of this clause.

12. **RECORDS; ACCESS** The Contractor and its subcontractors shall maintain all books, documents, payrolls, papers, accounting records and information of any type on any medium ("Project Records") that pertain to this Contract for such period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. Upon request by MaineDOT, the Contractor and its subcontractors shall make Work Records available for inspection and must provide MaineDOT with copies at all reasonable times without cost or liability to MaineDOT.

13. **TERMINATION AND FAILURE TO PERFORM** The Department may terminate this Contract with or without cause upon 7 days written notice. Termination of the contract shall not relieve the Contractor of its contractual responsibilities for the work completed prior to termination (including warranty obligations), nor shall it relieve the Surety of its obligation for claims arising from the Work or the Contract. The Department will pay for all accepted items of Work completed prior to the date of Termination at agreed upon prices.

If for any reason the Contractor is unable to complete the work in an acceptable manner the Department may give written Notice of Default to the Contractor, which will outline the required remedies. Any

delay by the Department in providing a written Notice of Default shall in no way constitute a waiver by the Department of any provision of the Contract. If the Department determines the default is not curable, the notice of default shall also include the date of termination. Termination of the Contract or portion thereof shall not relieve the Contractor of its Contractual responsibilities for the Work completed.

In addition the Department may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Contract in an acceptable and timely manner.

14. **GOVERNMENTAL REQUIREMENTS** The Contractor warrants and represents that it will comply with all governmental ordinances, laws and regulations including all applicable laws and regulations of OSHA.

15. **GOVERNING LAW** This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

If, in the performance of this Agreement, there arises a dispute between the Contractor and MaineDOT that cannot be resolved by the parties to the Contract, the parties may agree to submit the dispute to non-binding Alternate Dispute Resolution. All disputes shall be governed by Maine law, and all actions shall be filed in the Kennebec Superior Court, in Augusta Maine.

16. **STATE HELD HARMLESS** The Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Contract by the Contractor, its employees, agents or subcontractors. Claims to which this indemnification applies include, but are not limited to, the following: (i) claims suffered or incurred by any Contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity providing work, services, materials, equipment or supplies in connection with the performance of this Contract; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Contract; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Contract; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Contract; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Contractor taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Contract.

The Department's employees and other representatives act solely as representatives of the Department when conducting and exercising authority granted to them under the Contract. Such persons have no liability either personally or as Department employees.

17. **NOTICE OF CLAIMS** The Contractor shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Contractor by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.

18. **INSURANCE** The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

Workers' Compensation For all Work performed by the Contractor and any subcontractor, the Contractor and each subcontractor shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers coverage.

Commercial General Liability With respect to all Work performed by the Contractor and any subcontractors, the Contractor and any subcontractors shall carry commercial general liability insurance in an amount not less than \$400,000.00 per occurrence and \$2,000,000.00 in the Aggregate. The coverage must include products, completed operations, and Contractual liability coverages. The Contractual liability insurance shall cover the Contractor's obligations to indemnify the Department as provided in this Contract. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the Work involves such exposures. The Department shall be named as additional insured on the Commercial General Liability insurance policies carried by the Contractor that are applicable to the Work.

Automobile Liability The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be \$400,000.00 per occurrence.

Claims. Each insurance policy shall include a provision requiring the insurer to investigate and defend all named insured's against any and all claims for death, bodily injury or property damage, even if groundless.

19. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Contract shall not affect the remainder of said provision or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

20. **INTEGRATION** All terms of this Contract are to be interpreted in such a way as to be consistent at all times. If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy related to the Contract, the Contractor must notify MaineDOT of the ambiguity or waive claims resulting from any such ambiguity. In the case of ambiguity the following components of the Contract shall control in the following descending order of priority:

- Contract Agreement, Transportation Related Maintenance Work
- Bid Amendments (most recent to least recent)
- Appendix A – Special Provision Specifications of Work to be Performed or Request for Proposals
- Appendix B – Special Provisions for State Funded Transportation Related Maintenance Work
- Appendix C – Special Provisions
- Any remaining appendices in alphabetical order.
- Any remaining Special Provisions
- The Department's Notice to Contractors and any amendments

21. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Contract in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Contract.

22. **FURNISHING OF OTHER PROPERTY RIGHTS, LICENSES AND PERMITS** The Contractor shall acquire, at its sole expense, all property rights outside the Project Limits needed for construction staging, yarding, construction, waste disposal, or other Project-related purpose. The Contractor shall also acquire, at its sole expense, all licenses, Permits and other permissions that are necessary or appropriate to perform the Work that are not furnished by the Department.

23. **ALLOWABLE WORK TIMES** Work can be performed at any time except Saturdays, Sundays, Holidays and state government closure days, unless expressly specified otherwise in this Contract. Holidays are defined as New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. If a Holiday occurs on a Sunday, the following Monday shall be considered a Holiday. If a Holiday occurs on a Saturday, the preceding Friday shall be considered a Holiday. Saturday, Sunday or Holiday work must be approved by the Department. The Contractor is solely responsible for the planning and execution of Work in order to complete the Work within the Contract Time.

24. **SET-OFF RIGHTS** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, MaineDOT's right to withhold and take possession of monies due to the Contractor under this Contract up to any amounts the Contractor owes to the State of Maine pursuant to this Contract or any other contract, including any contract for a term commencing prior to the term of this Contract, plus any amounts that Contractor owes the State of Maine for any reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

25. **WORKERS AND EQUIPMENT** The Contractor shall at all times provide all superintendents, forepersons, laborers, inspectors, Subcontractors, subconsultants, Equipment, Materials, and Incidentals as needed to perform the Work in Conformance within the Contract Time. The Contractor shall provide all safeguards, safety devices, and protective Equipment and take all other action that is necessary to continuously and effectively protect the safety and health of all persons from hazards related to the Work.

Any person employed by the Contractor or by any Subcontractor or any officer or representative or agent of the Subcontractor, who, in the opinion of the Contract Administrator, is intemperate or disorderly, shall be removed immediately by the Contractor or Subcontractor employing such person. The employee shall not be employed again in any portion of the Work without prior approval from the Contract Administrator. Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Contract Administrator may suspend the Work by written notice until such orders are complied with.

All persons employed by or through the Contractor, except for registered trainees, shall have sufficient skill and experience to perform the Work properly. The Department may require that the Contractor discharge any such person who the Department determines jeopardizes safety of any person or the Project without cost or liability to the Department. If the Department determines that such person's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding Workers. Upon Receipt of such notice, the Contractor shall take any action it determines necessary to fulfill its obligations under the Contract.

26. ENVIRONMENTAL REQUIREMENTS

Temporary Soil Erosion and Water Pollution Control If the Work involves excavation or placement of soil, the Contractor shall stabilize the area on a daily basis and comply with all applicable federal, state, and local laws, rules, regulations, permit requirements and conditions.

Hazardous Materials If the Contractor encounters any condition that indicates the presence of uncontrolled petroleum or hazardous Materials, the Contractor shall immediately stop Work, notify the Department, treat any such conditions with extreme caution, and secure the area of potential hazard to minimize health risks to Workers and the public, and to prevent additional releases of contaminants into the environment. Such conditions include the presence of barrels, tanks, unexpected odors, discoloration of soil or water, an oily sheen on soil or water, excessively hot earth, smoke, or any other condition indicating uncontrolled petroleum or hazardous Materials. The Contractor shall continue Work in other areas of the Project unless otherwise directed by the Department. The Contractor shall comply with all federal, State, and local laws concerning the handling, storage, treatment, and disposal of uncontrolled petroleum or hazardous Material.

Waste Materials All waste materials shall be disposed of in accordance with all federal, State, and local laws.

Environmental Non-compliance - Remedies and Costs The Contractor shall be in non-compliance if it, or Subcontractors at any tier, fail to comply with the terms of this Contract or any applicable environmental or land use law or regulation including Project specific permit conditions.

If the Contractor is in non-compliance, the Department may, at its discretion:

- A. Withhold all Progress Payments, or any portion thereof, during the period the Contractor is in non-compliance;
- B. Remedy such non-compliance using State forces or another Contractor and deduct all costs incurred by the Department from Progress Payments. Such costs include direct costs, Project Engineering costs, and Contractor costs from amounts otherwise due the Contractor, and/or
- C. Suspend the Work for cause and without cost or liability to the Department. Said suspension shall continue until the Contractor has addressed all non-compliance issues as directed by the Department.

The Contractor shall be responsible for any fines and penalties assessed by environmental or land use regulatory agencies due to such non-compliance. Such penalties may be withheld from amounts otherwise due the Contractor.

27. **QUALITY AND STANDARDS** Materials and manufactured products incorporated into the work shall be new unless otherwise specified, free from defect, and in conformity with the contract. When material is fabricated or treated with another material or where any combination of materials is assembled to form a finished product, any or all of which are covered by specifications, the Department may reject the finished product if any of the components do not comply with the specifications. The Department may reject materials not conforming to the Specifications at any time, and the Contractor shall remove them immediately from the project site unless otherwise instructed by the Department. The Contractor shall not store or use rejected materials on any Department project.

If there is no applicable standard set forth in this contract for particular Work, then the Contractor shall perform that Work in accordance with industry standards prevailing at the time of bid. If the Department determines that Work is non-conforming, the Contractor shall remove, replace, or otherwise correct all unacceptable work as directed by the Department at the expense of the Contractor, without cost or liability to the Department.

28. **WARRANTY PROVISIONS** The Contractor unconditionally warrants and guarantees that the Work will be free from warranty defects for one year or as otherwise specified in this Contract. If the Department discovers any warranty defects during the warranty period, the Contractor agrees to perform all remedial work, at no additional cost or liability to the Department. Remedial Work will be completed within two weeks unless a more immediate response is required for safety or convenience, as determined by the Department.

The Contractor hereby assigns to the Department the right to enforce all manufacturer's warranties or guarantees on all materials, equipment or products purchased for the work that exceed the nature or duration of the warranty obligations assumed by the Contractor under this Contract.

The Contractor agrees that the warranty obligations provided by this Contract shall be reported as an outstanding obligation in the event of bankruptcy, dissolution, or the sale, merger, or cessation of operations of the Contractor.

29. **PAYMENT** The Contractor shall submit an itemized invoice to the Department for Work monthly, at the completion of the Work or as otherwise noted in the Contract documents for approval and payment. At a minimum, invoices shall include the following information:

- Contractor name, address & Contract Number
- Invoice Date & Number
- Dates of Work
- Description and Location of Work
- Quantities at the Prices contained in the Contractor's Bid

The Department will approve complete and correct invoices for accepted Work invoiced at bid prices. Payments to the Contractor shall be full compensation for furnishing all labor, equipment, materials, services, and incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or execution of the Work. The Contractor shall pay all taxes, charges, fees, and allowances. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract. Most items are exempt from Maine sales tax. The Contractor shall Bid in accordance with the Maine statutory exemption from sales tax. The Department may require that the Contractor submit backup documentation including copies of receipts, invoices, and itemized payments to Subcontractors. The Acceptance by the Contractor of the final payment, as evidenced by cashing of the final payment check, constitutes a release to the Department from all claims and liability under the Contract.

The Department may withhold payments claimed by the Contractor on account of:

- A. Incomplete, Inaccurate or Incorrect Invoices,
- B. Defective Work or Non-conforming Work,
- C. Damages for Non-conforming, Defective or Unauthorized Work or Equipment,
- D. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor, or failure of Subcontractors to make payments to Sub-Subcontractors or for Materials or labor,
- G. Regulatory non-compliance or enforcement,
- H. Failure to submit Documentation
- I. All other causes that the Department reasonably determines negatively affect the State's interest.

30. **RESPONSIBILITY FOR DAMAGE TO WORK** Except for damage to Project caused by Uncontrollable Events, the Contractor shall bear all risk of loss relating to the Work until Final Acceptance, regardless of cause, including completed Work, temporary Structures, and all other items or Materials not yet incorporated into the Work.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged Work or otherwise make good any losses that arise from such damage ("rebuilding, etc."). If the Contractor fails to Promptly commence and continue such rebuilding, etc., the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces and all costs will be deducted from amounts otherwise due the Contractor.

31. **RESPONSIBILITY FOR PROPERTY OF OTHERS** The Contractor shall not enter private property outside the Project Limits without first obtaining permission from the Owners.

The Contractor shall be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect, or misconduct of the Contractor until Final Acceptance. The preceding sentence includes damage to vehicles passing through the Work area.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged property or otherwise make any good losses that arise from such damage ("rebuilding, etc."). If the Contractor fails to commence and continue such rebuilding, etc. in a timely manner, the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces, and all costs will be deducted from amounts otherwise due the Contractor.

32. **NOTICE REQUIRED** When the Contractor becomes aware of facts or circumstances that may cause the Contractor to seek additional compensation, time, or any other change in Contract requirements ("Issue"), then the Contractor shall notify the Contract Administrator within 48 hours and before commencing any part of the Work relating to the Issue. The notice must describe the basic nature and extent of the Issue.

The written notice or confirmation will be known as a "Notice of Issue for Consideration". The Contractor will not be entitled to any additional compensation, time, or any other change to Contract requirements without a timely Notice of Issue for Consideration.

33. **ENTIRE CONTRACT** This document contains the entire Contract of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving

party. The parties expressly agree that they shall not assert in any action relating to the Contract that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Contract, or to exercise an option or election under the Contract, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.

2020 STANDARD DETAIL UPDATES

Standard Details and Standard Detail updates are available at:
<http://maine.gov/mdot/contractors/publications/standarddetail/>

<u>Detail #</u>	<u>Description</u>	<u>Revision Date</u>
502(19)	Bridge Drains	3/17/2023
502(15)	Bridge Drains	3/17/2023
502(20)	Bridge Drains	3/17/2023
502(23)	Bridge Drains	3/17/2023
502(24)	Bridge Drains	3/17/2023
502(25)	Bridge Drains	3/17/2023
502(26)	Bridge Drains	3/17/2023
504(07)	Diaphragm & Crossframe Notes	3/17/2023
507(20)	Steel Approach Railing 3-Bar	2/11/2021
507(21)	Steel Approach Railing 3-Bar	2/11/2021
507(22)	Steel Approach Railing 3-Bar	2/11/2021
507(23)	Steel Approach Railing 3-Bar	2/11/2021
507(27)	Steel Approach Railing	2/11/2021
526(01)	Portable Concrete Barrier	1/14/2021
526(01A)	Portable Concrete Barrier	1/14/2021
526(01B)	Portable Concrete Barrier	1/14/2021
526(02)	Portable Concrete Barrier	1/14/2021
526(02A)	Portable Concrete Barrier	1/14/2021
526(03)	Portable Concrete Barrier	1/14/2021
526(04)	Portable Concrete Barrier	1/14/2021
526(04A)	Portable Concrete Barrier	1/14/2021
526(04B)	Portable Concrete Barrier	1/14/2021
526(05)	Permanent Concrete Barrier	3/17/2023
526(21)	Permanent Concrete Barrier	3/17/2023
526(22)	Concrete Transition Barrier	3/17/2023
526(38)	Concrete Transition Barrier	3/17/2023
526(39)	Texas Classic Rail	3/17/2023
526(55)	Texas Classic Rail	3/17/2023

603(10)	Concrete Pipe Ties	6/10/2021
605(01)	Underdrain	7/8/2022
605(01)	Underdrain Notes	7/8/2022
606(17)	Midway Splice Guardrail Transition	6/10/2022
606(23)	Standard Bridge Transition – Type “1”	2/11/2021
606(24)	Standard Bridge Transition – Type “1A”	2/11/2021
608(02)	Detectable Warnings	6/10/2021
609(09)	Precast Concrete Vertical Curb	2/11/2021
627(07)	Crosswalk	2/22/2022
627(08)	Crosswalk	2/22/2022
643(11)	ATCC Cabinet	12/14/2020
801(11)	Pedestrian Ramp Notes	11/20/2023
801(12)	Pedestrian Ramp Requirements	11/20/2023
801(13)	Ramp Length Table	11/20/2023
801(14)	Parallel Pedestrian Ramp	11/20/2023
801(15)	Perpendicular Pedestrian Ramp – Option 1	11/20/2023
801(16)	Parallel Pedestrian Ramp – Option 2A	11/20/2023
801(17)	Perpendicular Pedestrian Ramp – Option 2A	11/20/2023
801(18)	Parallel Pedestrian Ramp – Option 2B	11/20/2023
801(19)	Perpendicular Pedestrian Ramp – Option 2B	11/20/2023
801(20)	Parallel Pedestrian Ramp – Option 3	11/20/2023
801(21)	Perpendicular Pedestrian Ramp – Option 3	11/20/2023
801(22)	Side Street Pedestrian Ramp	11/20/2023
801(23)	Parallel Pedestrian Ramp – Esplanade	11/20/2023
801(24)	Perpendicular Pedestrian Ramp – Esplanade	11/20/2023
801(25)	Island Crossings	11/20/2023
801(26)	Blended Transition	11/20/2023
801(26)	Blended Transition	1/19/2024
801(27)	Pedestrian Ramp Adjacent to Driveway or Entrance	11/20/2023
802(05)	Roadway Culvert End Slope Treatment	1/03/2017

APPENDIX A TO DIVISION 100

SECTION 1 - BIDDING PROVISIONS

A. Federally Required Certifications By signing and delivering a Bid, the Bidder certifies as provided in all certifications set forth in this Appendix A - Federal Contract Provisions Supplement including:

- Certification Regarding No Kickbacks to Procure Contract as provided on this page 1 below.
- Certification Regarding Non-collusion as provided on page 1 below.
- Certification Regarding Non-segregated Facilities as provided by FHWA Form 1273, section III set forth on page 21 below.
- "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" as provided by FHWA Form 1273, section XI set forth on page 32 below.
- "Certification Regarding Use of Contract Funds for Lobbying" as provided by FHWA Form 1273, section XII set forth on page 35 below.

Unless otherwise provided below, the term "Bidder", for the purposes of these certifications, includes the Bidder, its principals, and the person(s) signing the Bid. Upon execution of the Contract, the Bidder (then called the Contractor) will again make all the certifications indicated in this paragraph above.

CERTIFICATION REGARDING NO KICKBACKS TO PROCURE CONTRACT Except expressly stated by the Bidder on sheets submitted with the Bid (if any), the Bidder hereby certifies, to the best of its knowledge and belief, that it has not:

(A) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;

(B) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or;

(C) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract;

By signing and submitting a Bid, the Bidder acknowledges that this certification is to be furnished to the Maine Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this contract in anticipation of federal aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

CERTIFICATION REGARDING NONCOLLUSION Under penalty of perjury as provided by federal law (28 U.S.C. §1746), the Bidder hereby certifies, to the best of its knowledge and belief, that:

the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with the Contract.

For a related provisions, see Section 102.7.2 (C) of the Standard Specifications - "Effects of Signing and Delivery of Bids" - "Certifications", Section 3 of this Appendix A entitled "Other Federal Requirements" including section XI - "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" and section XII. - "Certification Regarding Use of Contract Funds for Lobbying."

B. Bid Rigging Hotline 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.

SECTION 2 - FEDERAL EEO AND CIVIL RIGHTS REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

A. Nondiscrimination & Civil Rights - Title VI The Contractor and its subcontractors 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 Department deems appropriate. The Contractor and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the "Required Contract Provisions, Federal Aid Construction Contracts", FHWA-1273.

B. Nondiscrimination and Affirmative Action - Executive Order 11246 Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

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 efforts 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:

Ensure and maintain a working environment free of harassment, intimidations, 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 forepersons, 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.

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 union have employment opportunities available, and to maintain a record of the organization's responses.

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 therefore, along with whatever additional actions the Contractor may have taken.

Provide immediate written notification to the Department's Civil Rights Office 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 Design-Builder's efforts to meet its obligations.

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 B above.

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 obligation; 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.

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 Forepersons, 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.

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 Contractor's and Subcontractors with whom the Contractor does or anticipates doing business.

Direct its recruitment efforts, both orally 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 test to be used in the selection process.

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.

Validate all tests and other selection requirements.

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.

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.

Ensure that all facilities and company activities are non segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractor's and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

C. Goals for Employment of Women and Minorities Per Executive Order 11246, craft tradesperson goals are 6.9% women and .5% minorities employed. However, goals may be adjusted upward at the mutual agreement of the Contractor and the Department. Calculation of these percentages shall not include On-the-Job Training Program trainees, and shall not include clerical or field clerk position employees.

For a more complete presentation of requirements for such Goals, see the federally required document "Goals for Employment of Females and Minorities" set forth in the next 6 pages below.

Start of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES
Federally Required Contract Document

§60-4.2 Solicitations

- (d) The following notice shall be included in, and shall be 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 pursuant to §60-4.6 of this part (see 41 CFR 60-4.2(a)):

Notice of Requirement for Affirmative Action to Ensure Equal 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 Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

<u>Goals for female participation in each trade</u>	6.9%
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Goals for minority participation for each trade

Maine

001 Bangor, ME	0.8%
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Non-SMSA Counties (Aroostook, Hancock, Penobscot, Piscataquis, Waldo, Washington)

002 Portland-Lewiston, ME

SMSA Counties: 4243 Lewiston-Auburn, ME (Androscoggin)	0.5%
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6403 Portland, ME (Cumberland, Sagadahoc)	0.6%
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Non-SMSA Counties: (Franklin, Kennebec, Knox, Lincoln, Oxford, Somerset, York)	0.5%
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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 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be in 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 of the subcontractor, estimated dollar amount of the subcontract; estimated started and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

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 the 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. 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 for 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 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 areas 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 specific.
 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 non working 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 expensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, when 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 sources 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 therefore, 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 complied under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific

review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as 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 other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing prior to the date for the acceptance of applications for apprenticeship or the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on site and in other areas of a Contractor's work force.
- 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 non segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of

solicitation to minority and female contractor associations and other business associations.

- p. Conduct a review, at least annually, of all supervisor's 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 (7 a 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 7 a 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 and reflected in the Contractor's minority and female work force 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 take 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, specific minority group of women is underutilized.)
10. The Contractor shall not use the goals and timetables or affirmative action even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if 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 violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementation 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 60-4.6.

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 location at which the work was performed. Records 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).

End of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES
Federally Required Contract Document

D. Section '**D Disadvantaged Business Enterprise (DBE) Requirements**' is removed in its entirety. The DBE material is in:

Section 105.10 EQUAL OPPORTUNITY AND CIVIL RIGHTS.

SECTION 3 - OTHER FEDERAL REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 3 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

A. Buy America

If the cost of products purchased for permanent use in this project which are manufactured of steel, iron or the application of any coating to products of these materials exceeds 0.1 percent of the contract amount, or \$2,500.00, whichever is greater, the products shall have been manufactured and the coating applied in the United States. The coating materials are not subject to this clause, only the application of the coating. In computing that amount, only the cost of the product and coating application cost will be included.

Ore, for the manufacture of steel or iron, may be from outside the United States; however, all other manufacturing processes of steel or iron must be in the United States to qualify as having been manufactured in the United States.

United States includes the 50 United States and any place subject to the jurisdiction thereof.

Products of steel include, but are not limited to, such products as structural steel, piles, guardrail, steel culverts, reinforcing steel, structural plate and steel supports for signs, luminaries and signals.

Products of iron include, but are not limited to, such products as cast iron grates.

Application of coatings include, but are not limited to, such applications as epoxy, galvanized and paint.

To assure compliance with this section, the Contractor shall submit a certification letter on its letterhead to the Department stating the following:

“This is to certify that products made of steel, iron or the application of any coating to products of these materials whose costs are in excess of \$2,500.00 or 0.1 percent of the original contract amount, whichever is greater, were manufactured and the coating, if one was required, was applied in the United States.”

B. Materials

a. Convict Produced Materials References: 23 U.S.C. 114(b)(2), 23 CFR 635.417

Applicability: FHWA's prohibition against the use of convict material only applies to Federal-aid highways. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if: 1) such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or 2) such material has been produced in a qualified prison facility, e.g., prison industry, with the amount produced during any 12-month period, for use in Federal-aid projects, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987.

Materials obtained from prison facilities (e.g., prison industries) are subject to the same requirements for Federal-aid participation that are imposed upon materials acquired from other sources. Materials manufactured or produced by convict labor will be given no preferential treatment.

The preferred method of obtaining materials for a project is through normal contracting procedures which require the contractor to furnish all materials to be incorporated in the work. The contractor selects the source, public or private, from which the materials are to be obtained (23 CFR 635.407). Prison industries are prohibited from bidding on projects directly (23 CFR 635.112e), but may act as material supplier to construction contractors.

Prison materials may also be approved as State-furnished material. However, since public agencies may not bid in competition with private firms, direct acquisition of materials from a prison industry for use as State-furnished material is subject to a public interest finding with the Division Administrator's concurrence (23 CFR 635.407d). Selection of materials produced by convict labor as State-furnished materials for mandatory use should be cleared prior to the submittal of the Plans Specifications & Estimates (PS&E).

b. Patented/Proprietary Products References: 23 U.S.C. 112, 23 CFR 635.411

FHWA will not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

- the item is purchased or obtained through competitive bidding with equally suitable unpatented items,
- the STA certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- the item is used for research or for a special type of construction on relatively short sections of road for experimental purposes. States should follow FHWA's procedures for "Construction Projects Incorporating Experimental Features" (expmmt.htm) for the submittal of work plans and evaluations.

The primary purpose of the policy is to have competition in selection of materials and allow for development of new materials and products. The policy further permits materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of, acceptable materials or products listed; and the Division Administrator may approve a single source if it can be found that its utilization is in the public interest.

Trade names are generally the key to identifying patented or proprietary materials. Trade name examples include 3M, Corten, etc. Generally, products identified by their brand or trade name are not to be specified without an "or equal" phrase, and, if trade names are used, all, or at least a reasonable number of acceptable "equal" materials or products should be listed. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products.

c. State Preference References: 23 U.S.C. 112, 23 CFR 635.409

Materials produced within Maine shall not be favored to the exclusion of comparable materials produced outside of Maine. State preference clauses give particular advantage to the designated source and thus restrict competition. Therefore, State preference provisions shall not be used on any Federal-aid construction projects.

This policy also applies to State preference actions against materials of foreign origin, except as otherwise permitted by Federal law. Thus, States cannot give preference to in-State material sources over foreign material sources. Under the Buy America provisions, the States are permitted to expand the Buy America restrictions provided that the STA is legally authorized under State law to impose more stringent requirements.

d. State Owned/Furnished/Designated Materials References: 23 U.S.C. 112, 23 CFR 635.407

Current FHWA policy requires that the contractor must furnish all materials to be incorporated in the work, and the contractor shall be permitted to select the sources from which the materials are to be obtained. Exceptions to this requirement may be made when there is a definite finding, by MaineDOT and concurred in by Federal Highway Administration's (FHWA) Division Administrator, that it is in the public interest to require the contractor to use materials furnished by the MaineDOT or from sources designated by MaineDOT. The exception policy can best be understood by separating State-furnished materials into the categories of manufactured materials and local natural materials.

Manufactured Materials When the use of State-furnished manufactured materials is approved based on a public interest finding, such use must be made mandatory. The optional use of State-furnished manufactured materials is in violation of our policy prohibiting public agencies from competing with private firms. Manufactured materials to be furnished by MaineDOT must be acquired through competitive bidding, unless there is a public interest finding for another method, and concurred in by FHWA's Division Administrator.

Local Natural Materials When MaineDOT owns or controls a local natural materials source such as a borrow pit or a stockpile of salvaged pavement material, etc., the materials may be designated for either optional or mandatory use; however, mandatory use will require a public interest finding (PIF) and FHWA's Division Administrator's concurrence.

In order to permit prospective bidders to properly prepare their bids, the location, cost, and any conditions to be met for obtaining materials that are made available to the contractor shall be stated in the bidding documents.

Mandatory Disposal Sites Normally, the disposal site for surplus excavated materials is to be of the contractor's choosing; although, an optional site(s) may be shown in the contract provisions. A mandatory site shall be specified when there is a finding by MaineDOT, with the concurrence of the Division Administrator, that such placement is the most economical or that the environment would be substantially enhanced without excessive cost. Discussion of the mandatory use of a disposal site in the environmental document may serve as the basis for the public interest finding.

Summarizing FHWA policy for the mandatory use of borrow or disposal sites:

- mandatory use of either requires a public interest finding and FHWA's Division Administrator's concurrence,
- mandatory use of either may be based on environmental consideration where the environment will be substantially enhanced without excessive additional cost, and
- where the use is based on environmental considerations, the discussion in the environmental document may be used as the basis for the public interest finding.

Factors to justify a public interest finding should include such items as cost effectiveness, system integrity, and local shortages of material.

C. Standard FHWA Contract Provisions - FHWA 1273

Unless expressly otherwise provided in the Bid Documents, the following “Required Contract Provisions, Federal Aid Construction Contracts”, FHWA-1273, are hereby incorporated into the Bid Documents and Contract.

Cargo Preference Act : Contractor and Subcontractor Clauses. “Use of United States-flag vessels: The contractor agrees—“(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.”(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.”(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973)) [42 FR 57126, Nov. 1, 1977]

The Cargo Preference Act requirements apply to materials or equipment that are acquired for a specific Federal-aid highway project. In general, the requirements are not applicable to goods or materials that come into inventories independent of an FHWA funded-contract. For example, the requirements would not apply to shipments of Portland cement, asphalt cement, or aggregates, as industry suppliers and contractors use these materials to replenish existing inventories. In general, most of the materials used for highway construction originate from existing inventories and are not acquired solely for a specific Federal-aid project. However, if materials or equipment are acquired solely for a Federal-aid project, then the Cargo Preference Act requirements apply.”

Start of FHWA 1273 REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS (As revised through October 23, 2023)

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants /

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

3. Withholding for unpaid wages and liquidated damages

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

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

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

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

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

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

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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