



HONORABLE MARIA RIVERA
Mayor, City of Central Falls

REQUEST FOR BIDS

JENKS PARK
IMPROVEMENTS PHASE 1

CONTRACT NO. 2022-0007

Issue Date: Wednesday September 21, 2022
Bid Number: 2022-0007

There will be an optional pre-bid meeting at 9:00 a.m.
on Monday September 23, 2022, at Jenks Park

The submission deadline for proposals is
Thursday October 6, 2022, at 2:00 p.m.

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**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

1. THE OFFERING

The City of Central Falls ("City") seeks qualified contractors ("Respondent") to make improvements to Cogswell Tower and construct a new Playground in historic Jenks Park, located at 506 Broad Street, Central Falls, Rhode Island, adjacent to City Hall.

The work to be performed under this contract includes, but is not limited to, all labor, material, and equipment necessary to install a new playground and repairs to Cogswell Tower. The proposed work on the tower includes masonry repairs, roof repairs/replacement, and timber framing repairs. The proposed work includes removal of existing playground, preparation of new play area and installation of new play equipment and surfacing, removal of existing walkway and construction of new walkway, installation of fencing, and landscaping. Further details provided in the design specifications.

The complete set of bid documents includes three documents plus any addenda issued as described below. The three original documents are: (1.) this document, (2.) the technical specifications, and (3.) the plan set. Hard copies of the bid documents (plans, specifications, and all other bidding documents for the above-named project) can be examined in the Office of the City of Central Falls Purchasing Department, City Hall, 580 Broad Street, Central Falls, RI, 02863 between the hours of 9:00 a.m. and 3:00 p.m. Digital (.pdf) copies of the documents may be downloaded through the City of Central Falls website (<https://www.centrafallsri.gov/rfps>) by following the "Business - Bids and RFPs" link on the home page. Full documents will be available to all bidders. Any Bidder or concerned parties who need further assistance in locating or retrieving the documents may contact the City's Purchasing Agent, Jahaira Rodriguez, at (401) 727-7400 or jrodriguez@centrafallsri.us for assistance. Arrangements for hard copies of bidding documentation can also be made by contacting the City's Purchasing Agent. Documents will be available at bidder's cost of printing as a means of assuring that all appropriate materials are provided.

The selected contractor must agree to commence work on the playground site within seven (7) days from issuance of the Notice to Proceed, with the expectation that site clearing, installation of the subbase, other earthwork, and potentially installation of pavement and footings, will be completed before the end of the 2022 calendar year, and to commence work on the tower by April 1, 2023. The playground is to be completed by June 1, 2023, and tower repairs are to be completed by August 31, 2023.

The City reserves the right to accept or reject any or all bids or any portion of the bids for any reason.

The City has been awarded funds from (i.) the federal Community Development Block Grant (CDBG) Program administered through the Rhode Island Office of Housing and Community Development, (ii.) the Rhode Island Department of Environmental Management's Outdoor Recreation Grant Program, and (iii.) the Rhode Island Historic Preservation and Heritage Commission State Preservation Grant Program. The attention of Bidders is called to the fact that this project is to be bid upon and the contract executed under all applicable Federal laws, including Title VI of the Civil Rights Act of 1964, as amended and supplemented, and the *Required Contract Provisions for Federal-Aid Construction Contracts*, which are included in Appendix A, and all applicable State laws, municipal ordinances, rules and regulations and lawful orders of all public authorities having jurisdiction over the proposed work and for the safety of persons or property or to protect them from damage, injury or loss.

With respect to Federal-Aid Construction Contracts, prospective bidders are hereby informed that the contract for this project will be subject to the Federal Highway Act of 1968 and Davis-Bacon Act. All contractors and subcontractors will be subject to and monitored for conformance with the Federal Prevailing Wage Rates. Prevailing wage rates available online at www.dol.gov.

Trainee Provisions shall not apply to this Contract. The training hour requirement is zero, and the goal is zero.

Attention of Bidders is particularly called to the requirements as to conditions of employment to be observed and wage rates to be paid under the Contract. In conformity with the provisions of State Labor laws for Public Works Projects, General Laws of Rhode Island, Revision of 1956, Chapters 37-12 and 37-13, as amended, the minimum wages for a day's work paid to a craftsman, teamsters, and laborers shall not be less than the customary and prevailing rate of wages for a day's work in the locality where the work is undertaken.

State schedules of prevailing wage rates can be found in the Rhode Island Department of Labor and Training website: <http://www.dlt.ri.gov>.

As both federal and State funds will be used for this project, the strictest requirements will be enforced.

2. INSTRUCTIONS

Respondents to this request for bids must submit their proposals no later than October 6th, 2022, at 2:00 p.m. An official authorized to bind the Respondent to the provisions of its response must sign the Response Form. The City will review all responses and reserves the right to accept or reject all responses.

Sealed bids will be accepted in the City Clerk's Office, City Hall, 580 Broad Street, Central Falls, Rhode Island, until the time indicated, for the commodities, equipment or services listed in the specifications. The date and time of the public opening of bids will be posted as an addendum to this bid on the City's website (www.centralfallsri.us/purchasing) by the close of business on September 30, 2022.

Bid must be submitted in a sealed envelope and addressed to:

**City of Central Falls
City Clerk
580 Broad St.
Central Falls, RI 02863**

The envelope must include the name and address of the Respondent and the lower left corner of envelope must contain the following identification: SEALED BID, JENKS PARK IMPROVEMENTS PHASE I – CONTRACTNO. 2022-0007. **All bids must be received by 2:00 p.m. in the City Clerk's Office on Thursday October 6th, 2022. NO BIDS WILL BE ACCEPTED AFTER 2:00 p.m.**

PRE-BID MEETING:

An optional pre-bid meeting will be held on site at Jenks Park, 602 Broad Street, Central Falls, at 9:00 a.m. on Monday, September 26. Attendees should meet at the base of Cogswell Tower at that time. Access to the tower will be provided.

QUESTIONS AND COMMENTS:

All questions regarding this RFP must be submitted in writing to the Central Falls Planning Department

no later than 12:00 p.m. on Wednesday, September 28, 2022. Questions received after that time will not be addressed. Questions should be emailed to emiller@centralfallsri.us. ANY UNSOLICITED COMMUNICATIONS BETWEEN THE RESPONDENT'S FIRM OR ITS AGENTS AND THE CITY MAY RESULT IN FIRM'S DISQUALIFICATION FROM THE SELECTION PROCESS, AS DETERMINED BY THE DISCRETION OF THE CITY OR ANY CITY BOARD OR COMMISSION. All submitted questions and the City's written response to each will be available as an addendum that will be posted to the City's website (<https://www.centralfallsri.gov/rfps>) on or before 12:00 p.m. on Monday, October 3, 2022. Potential proposers are responsible for accessing the addendum on the website or by contacting the Central Falls Planning Department at emiller@centralfallsri.us to request a copy of the addendum. Proposers must acknowledge receipt of all addenda on the City proposal form which will be submitted with the proposal package.

SELECTION METHOD:

- Basic costs presented in the Bid Proposal.
- Demonstrated experience in the type of work required. (See Reference and Statement of Bidder's Qualifications forms in **Appendix A** of this document to be submitted with the bid.)
- Record of firm in accomplishing work on other similar projects in required time frame.
- Company background, experience and expertise of the owners/principals and the potential Project Manager/Construction Superintendent.

The contract, if awarded, will be made to the lowest qualified Bidder meeting specifications unless the City determines that the public interest will be better served accepting a higher Proposal. For purposes of this award, the lowest qualified Bidder meeting the specifications of the City's determination of the public interest will be construed as the lowest evaluated and responsive Bidder.

3. BID CONTENTS

The following are the elements that should be included in responses to the bid. Please provide responses in the order presented in this section.

A. Cover Letter/Statement of Qualifications

The cover letter should introduce the Respondent and address their interest for the project. The cover letter should include a narrative describing the contractor: the type of services provided, the location of its operations, the number and location of employees, etc. The cover letter should describe major upcoming projects and likely availability to complete additional projects.

B. Response Forms

All forms included in Appendix A must be filled out completely, signed by the Respondent, and included in the bid response. Note that a Bid Bond (see Item 5 g., below), Performance Bond, Payment Bond, and Evidence of Insurance (see item 13, below) must be included with the Response Form.

C. Proposal

A lump sum amount for the work described in the technical specifications and plans is to be provided using the form in Appendix C. Unit pricing for potential additional work and add alternate items must also be provided in the same form.

4. FORM OF BID

Bids shall be submitted with one Original, 4 Copies, and one electronic copy on a USB drive with supplemental information, drawings, warranties and other required documentation, literature, and material to be provided, with the bid.

5. SUBMISSION OF BIDS

- a. Envelopes containing bids must be sealed and addressed to the Purchasing Agent, City Hall, 580 Broad Street, Central Falls, RI 02863, and the lower left corner of the envelope must contain the following identification: SEALED BID, JENKS PARK IMPROVEMENTS PHASE I – C O N T R A C T N O. 2022-0007.
- b. The Purchasing Agent will indicate in the advertisement the deadline for submitting bids and no bid received thereafter will be considered. The date and time of the public opening of bids will be posted as an addendum to this bid on the City's website (www.centralfallsri.us/purchasing) by the close of business on September 29, 2022.
- c. It is the Bidder's responsibility to see that their proposal is delivered within the time and at the place prescribed.
- d. Proposals received prior to the time of opening will be securely kept, unopened. No responsibility will attach to any officer or person at the City of Central Falls for the premature opening of a proposal not properly addressed and identified as a bid.
- e. Any bidder may withdraw their bid personally or by written request at any time prior to the advertised time for opening.
- f. Telephonic or oral bids, amendments, or withdrawals will not be accepted.
- g. Negligence on the part of the bidder in preparing the bid confers no rights for the withdrawal of the bid after it has been opened.
- h. Unless otherwise specified, no bid may be withdrawn for a period of sixty (60) days from time of bid opening.
- i. Any proposal received after the time and date specified shall not be considered; even if it is determined by the City that such non-arrival before the time set for opening was due solely by a delay for which the vendor is not responsible.
- j. Any deviation from the specifications must be noted in writing and attached as a part of the bid. The bidder shall indicate the item or part with the deviation and indicate how the bid will deviate from specifications.
- k. A five percent (5%) bid bond is required to accompany all bids in the form of certified check, cashier's check, treasurer's check, or bid bond in the amount of five (5%) percent of the total bid. If the bidder is a partnership, the bond should be signed by each of the individuals who are partners. If the bidder is a corporation, the bond should be signed in its correct incorporated name by a duly authorized officer, agent, or attorney- in -fact and there should be attached to it a certified copy of their power of attorney to sign such bonds. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the contract. The surety, for value received, hereby stipulates, and agrees that the obligations of said surety and its bond shall be in no way impaired or affected by any extension of the time within which the

City may accept such bid; and said surety does hereby waive notice of any such extension. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

- l. Specifications shall be made a part of any contract by and between the City of Central Falls and the bidder.
- m. If the estimated cost of the article or labor and materials is \$50,000.00 or more, the successful bidder must provide, within 7 days of notification of the successful bid, a performance bond of an approved surety company in a sum equal to the estimated contract price which bond shall be conditioned upon the full and faithful performance of the contract. It shall provide further, that in the event the bidder fails or neglects to execute the contract or deliver the bond, the contract shall be null, and void and the bond shall be retained by the City as liquidated damages for the delay and expense caused by the abandonment of the contract.
- n. Each bid must be submitted on the prescribed form. All blank spaces for the bid prices must be typewritten in both words and figures. In the event that there is a discrepancy in the Bid Proposal between the lump sum or unit prices written in words and figures, the price written in words will govern.
- o. The prices quoted and conditions stated on this bid shall be firm and final. Any correspondence or notations accompanying this bid, changing any prices or items, may subject the bid to being rejected at the sole discretion of the City of Central Falls (herein referred to as the City).
- p. All costs for product material delivery must be included as part of the unit pricing as listed in the bid proposal. The quantities listed are for estimating purposes only of the work to be performed. It will be the responsibility of the Bidder to familiarize themselves with the proposed work and the site conditions. Upon the evaluation of all bid proposals, the City of Central Falls reserves the right to increase or decrease the actual amount of work requested based on the unit prices quoted to accommodate the available project funding.
- q. The City of Central Falls reserves the right to award a contract based on the total of the "Base Bid" items in part or in total with any or all work items to fit the City's project budget for funding or that is in the best interest of the City. Upon contract award, the City may add the Add Alternate to the selected bidder in part or in their entirety to fit the City's project budget.
- r. When applicable, the bidders' attention is directed to the fact that all applicable federal laws, state laws, municipal ordinances, rules and regulations and lawful orders of all public authorities having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss - including wages of the crafts doing the work - shall prevail; and they will be deemed to be included in the contract, the same as though herein written out in full.
- s. The City of Central Falls reserves the right to accept or reject, without prejudice, any or all proposals or to waive any irregularities therein, or to accept the bid deemed to be in the best interest of the City.
- t. In awarding the contract, the City of Central Falls may consider all aspects including, but not limited to quality, availability of product, references, and cost.
- u. The City is exempt from the payment of the Rhode Island Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30, Paragraph 1, as amended. The

prices bid must be exclusive of taxes and will be so construed.

- v. The City of Central Falls reserves the right to cancel an agreement with the Vendor with thirty (30) days written notice and to award the contract to the next highest evaluated bidder.

6. BUILDING PERMITS AND FEES

Permits are required for the commencing and completion of the work. The City does not collect permit fees on City projects. However, the contractor will be responsible for the State ADA fee.

7. RHODE ISLAND SALES TAX

The City is exempt from the payment of the Rhode Island Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30, Paragraph 1, as amended.

8. FEDERAL EXCISE TAXES

The City is exempt from the payment of any excise tax or federal transportation taxes. The price bid must be exclusive of taxes and will be so construed.

9. QUALIFICATIONS OF BIDDERS

Contractors shall submit a statement or list of work demonstrating at least five (5) years' experience in the last seven (7) years performing similar construction for municipalities, or government agencies to be considered for award. The City may make such investigations as it deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish the City with all such information and date for the purpose as may be requested.

The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder or sub-bidders fail to satisfy the Town that they are properly qualified to carry out the obligations of the contract and to complete the work.

Please supply at least three references, complete with name of contact and phone number from recent clients that bidder has performed similar work within similar prescribed timeline deadlines.

See Appendix A of this document for Reference and Statement of Bidder's Qualifications forms.

10. ADDENDA AND INTERPRETATIONS

Any Addenda will be issued by 12:00 p.m. Friday September 30, 2022.

No interpretation on the meaning of the plans, specifications or other contract document will be made to any bidder orally. Every request for such interpretations should be in writing addressed to the City of Central Falls, Office of the Purchasing Agent, 580 Broad Street, Central Falls, RI 02863 and to be given consideration must be received by the Pre-Bid meeting.

11. INDEMNIFICATION AND HOLD HARMLESS

The bidder shall protect defend and indemnify the City of Central Falls and the Rhode Island Department of Transportation, including their officers, agents and employees, and hold them free and harmless from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, resulting from injury to, or death of, any person or

damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with, the performance of the work under any contract made as part of this award. It shall apply to any acts or omissions of bidder's agents, employees, subcontractors or suppliers. The bidder also shall hold the City of Central Falls and the State of Rhode Island harmless from any and all claims or liens for labor, services, or materials furnished to the bidder in connection with the performance of the bidder's obligation under any contract between the bidder and City. This section shall not be applicable to injury, death or damage to property arising from the sole negligence or sole willful misconduct of the City of Central Falls, its officers, agents or employees.

12. PROPERTY LOST, DAMAGED OR DESTROYED.

Any property or work to be provided by bidder will remain at the bidder's risk until written acceptance by the City of Central Falls and the bidder will replace, at bidder's expense, all property or work lost, damaged or destroyed by any cause whatsoever.

13. EVIDENCE OF INSURANCE

A policy of auto, general liability and property damage insurance shall be attached hereto, covering any and all work performed under a contract between the City and bidder, naming the City as an additional insured shall be made part of any contract between the City and bidder in an amount of not less than \$1,000,000 for projects in excess of \$500,000. A policy of professional liability or errors and omissions insurance covering any and all work performed under any contract between the City and bidder naming said bidder shall be attached hereto. A copy of workers compensation insurance policy shall be attached, if required by Rhode Island law for this bid and covering all work to be performed under any contract between the City and bidder naming the bidder as insured shall be attached hereto. The City, upon award of bid, will request verification from the insurance company to ensure that the agent has properly notified the company and that coverage has been bound. The minimum acceptable coverage is as follows:

Commercial General Liability

- \$ 1,000,000 Each Occurrence
- \$ 2,000,000 General Aggregate
- \$ 1,000,000 Products and Completed Operations Aggregate
- \$ 1,000,000 Personal & Advertising Injury

Business Automobile Insurance

- \$ 500,000 Combined single Limit Liability Insurance

The company providing insurance and bonds shall be a duly authorized insurance company with a rating of or greater than "A-" as rated by the A. M. Best Co., must be listed on Department of Treasury Circular #570, and which is satisfactory to the City of Central Falls (herein called the "City") and authorized to do business in the State of Rhode Island.

14. DBE GOAL

The bidder shall include a plan for meeting the goal that a minimum of 10% of the value of the bid will be completed by State-of-Rhode-Island-certified Disadvantaged Business Enterprises (DBE's). The successful bidder must indicate the DBE's it intends to utilize to achieve the above-stated percentage prior to award of the contract. While the dollar value of this project has not been determined, the selected respondents are still responsible for achieving this goal.

15. TERMS AND LIMITATIONS

The issuance of this request for bids, the submission of a response by any Respondent, or acceptance of such response by the City do not individually or collectively obligate the City in any manner. The City reserves the right (1) to amend, modify, or withdraw this request for bids, (2) to

revise any requirements of the request for bids, (3) to require supplemental statements or information from any Respondent, (4) to accept or reject any or all responses, (5) to extend the deadline for submission of responses, (6) to negotiate or hold discussions with any Respondent and to waive defects and allow corrections of deficient responses, and (7) to cancel this request for bids, in whole or in part, if the City deems it in their best interest to do so. The City may exercise these rights at any time without notice and without liability to any Respondent for their expenses incurred in the preparation of the responses. The City does not assume any liability for any pre-contractual activity and/or costs incurred by the Respondents to this request for bids and reserves all its rights in law and equity with respect to this request for bids.

All submissions become the property of the City. The City shall be entitled to retain and use for the project without compensation to any Respondent any information submitted, including, but not limited to, any concept, element, or idea (including financial structures) disclosed in or evident in the submission or meetings or interviews with Respondents. The City believes the information in this request for bids is accurate, but the City makes no warranties to such accuracy and assumes no responsibility for errors or omissions contained herein.

The City shall be the sole decision maker of whether a response complies with the requirements of the request for bids and whether responses have merit. Nothing contained in this request for bids shall limit the City in its selection of entities to be invited to respond to future solicitations for this project or future projects, nor limit the City's discretion in any way in formulating and adopting a development plan for the site. Submission of a response to this request for bids by any Respondent constitutes Respondent's permission and consent to inquiries by the City concerning the Respondent and its ability to undertake the development project, including checking references, credit checks, and similar investigations.

It is the policy of the City to comply with all municipal, state, and federal laws, policies, orders, rules and regulations, which prohibit unlawful discrimination.

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CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

APPENDIX A

Bid Response

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**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

RESPONSE FORM

TO: THE CITY OF CENTRAL FALLS

From: _____

References:

The following references are provided (include below or attach a separate list):

Business	Contact Name	Address	Phone	Email

- Statement of Qualifications** (see form below, attach to this Response Form)
- Bid Bond** (see form below, attach to this Response Form)
- Evidence of Insurance** (attach to this Response Form)
- Federal and State Forms included in Appendices A and B** (attach to this Response Form)
- Performance & Pay Bonds** (see Appendix E. attach to this Response Form)
- The undersigned agrees that:**

- The undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of a response to this bid.
- The undersigned has reviewed the existing conditions of the site and believes the below bid is sufficient to complete the scope of work
- The undersigned will, if selected, act in good faith to complete projects as part of this effort in an expeditious manner.
- The undersigned has had no judgements against it in the past two (2) years. If the undersigned has judgements, please elaborate here:

This bid includes Addendum(s) _____

Contact Person: _____

Telephone: _____

Email address: _____

Authorized Signature: _____

Name: _____ Title: _____

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**CITY OF CENTRAL FALLS
JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

STATEMENT OF BIDDER'S QUALIFICATIONS

Separate statements shall be submitted by the bidder with his/her proposal for Him/herself, the Designer, the Construction Contractor, and for major design or construction subcontractors . All questions must be answered completely. The date given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached pages keyed into this form. The bidder may submit any additional information he/she desires .

1. Name of Bidder _____
(Proper Name First)

2. Contact Person / Title _____

3. Permanent Main Office Address _____

4. Telephone & Email _____

5. When / State organized _____

6. If a Corporation, When Incorporated _____

7. How many years have you been engaged in the contracting business under your present firm or trade name?

8. State your current contracts in-hand. (Schedule the contracts showing amount of each contract and the appropriate anticipated date of completion .)

STATEMENT OF BIDDER'S QUALIFICATIONS
Page 2

9. Will your firm be the Bidder, Designer, Construction Contractor, or Design or Construction Contractor for this project?

10. State the general character of work performed by your Company:

11. Have you ever failed to complete any work awarded to you? _ If so, where and why:

12. Have you ever defaulted on a contract? _____
If so, where, and why?

13. List the more important projects recently completed by your Company, stating the appropriate cost for each, and the month and year complete:

Projects	Cost	Completion Date
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14. List the major equipment your Company has available for this project:

STATEMENT OF BIDDER'S QUALIFICATIONS

Page 3

- 15. List the names of projects, owners, architects, contract amounts, dates of completion, and percent of work accomplished with own forces which have been completed within the last five (5) years (or projects etc. which a partner or officer, while associated with another organization, was primarily responsible for):

Project Location	Owner	Architect	Contract \$	Date Completed	contact Person / Phone
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- 16. List the background and experience of all principal members of your organization:

Name	Background / Experience
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- 17. State your firm's particular qualifications, services, etc. for completing the project on-time within the project's program:

STATEMENT OF BIDDER'S QUALIFICATIONS

Page 4

- 18. Based on your knowledge of construction and the Owner's program for the project indicate a project completion date:

- 19. Credit Available:

- 20. Give bank reference:

- 21. Will you, upon request, complete a detailed financial statement and furnish any other information requested by the Owner?

- 22. The Bidder hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this:
- 23. The Bidder Duns Number (Required) _____

STATEMENT OF BIDDER'S QUALIFICATIONS,

Dated this _____ day of _____, 20_____

Name of Bidder _____

By (signature) _____

By (printed name) _____

Title _____

State of _____

County of _____

Subscribed and sworn before me this
_____ day of _____, 20_____

(Title)

My Commission expires _____

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BID BOND

Any singular reference to Bidder, Surety, City, or other party shall be considered plural where applicable. BIDDER

(Name and Address):

SURETY (Name and Address of Principal Place of Business):

CITY (Name and Address): *The City of Central Falls
Office of the Purchasing Agent City Hall
580 Broad Street Central Falls, RI,
02863*

BID

Bid Due Date: **October 6, 2022**

This project consists of constructing sidewalk and roadway improvements on Sylvian Street between Broad Street and Washington Street in the City of Central Falls, RI. Included in the work is the milling of existing pavement; installation of new hot mix asphalt pavement; replacement of sidewalks and driveways, installation of new wheelchair ramps; installation of new granite curbing, installation of Chicane Islands, resetting existing granite curbing; installation of new and removal and stockpiling of existing sewer manhole frames and covers, adjustment of roadway utility structures (such as frames & covers, frames & grates, gate valve boxes, etc.) to grade; dust control; loam and mulch; tree and misc. landscaping plantings; traffic signage and pavement markings, traffic management; and all other incidentals necessary to complete the work.

BOND

Bond Number:

Date (Not later than Bid due date):

Penal sum _____
(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal) _____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title (Attach Power of
Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Project: JENKS PARK IMPROVEMENTS PHASE I - CONTRACT NO. 2022-0007

Limits:

City/Town: Central Falls

County: PROVIDENCE

Submitted By: _____

Address: _____

Name of Surety: _____

Total Bid: _____

(BIDDER MUST FILL IN ALL ABOVE SPACES)

The basis of award of the Contract will include the total bid for all quantities of work in the proposal subject to review and correction as provided for in the Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction and Standard Details.

NOTE: The State of Rhode Island Standard Specifications for Road and Bridge Construction and Standard Details consists of the following:

- The Rhode Island Standard Specifications for Road and Bridge Construction, March 2018, with all revisions.
- The Rhode Island Standard Details, 1998 Edition, with all revisions.
- The Rhode Island Bridge Standard Details, 2010 Edition, with all revisions.
- City of Providence Standard Details when specified
- The Division of Purchases Procurement Regulations Adopted December 2010.

DEPARTMENT OF ADMINISTRATION RI STATE
EQUAL OPPORTUNITY OFFICE
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE OF COMPLIANCE

The undersigned contractor agrees and certified that it is in compliance with applicable requirements of Federal Executive Order #11246, as amended - Certification of Non-Segregated Facilities, State of Rhode Island General Law 28-5.1-10, and other regulations as issued by the Rhode Island Economic Development Corporation, as set forth below, or will take steps to comply with such requirements prior to acceptance of any contract from the State of Rhode Island.

EQUAL OPPORTUNITY CLAUSE

- A. The contractor will not discriminate against any employee or applicant for employment because race, age, handicap/disability, color, religion, sex, national origin or veteran status. The contractor will take affirmative action to ensure that applicants for employment and employees are treated equitably, without regard to their race, age, handicap/disability, color, religion, sex, national origin or veteran status.
- B. The contractor will, in all solicitations or advertisements for employees, placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, handicap/disability, color, religion, sex, national origin or veteran status.
- C. The contractor agrees to obtain Compliance Certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000.00.

NOTICE TO ALL CONTRACTORS

If it should be determined by the RI State Equal Opportunity Office that any contractor doing business with the State of Rhode Island is guilty of non-compliance with the provisions of this document, said contractor will be given two written warnings, if the said contractor does not comply immediately after the second written notice, then the State Equal Opportunity Office will notify the Rhode Island Economic Development Corporation, who shall have the authority to have the contract revoked and all contractual obligations of the State dealing with the contract in question will be null and void.

SIGNATURE AND TITLE: _____

PRINT NAME: _____

COMPANY: _____ DATE: _____

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

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

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

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

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

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

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

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

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

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

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

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

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

Instructions for Certification (B)

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

2. 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.

3. 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 when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. 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.

6. 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.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower 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.

Applicant		Date
Signature of Authorized Certifying Official		Title

Equal Employment

U.S. Department of Housing
and Urban Development

Opportunity Certification

Excerpt From 41 CFR §60-1.4(b)

Office of Housing
Federal Housing Commissioner

OMB Control No. 2502-0029
(exp. /3 /20)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by referenced to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

(1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

(2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

(3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

(4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

Firm Name and Address

By

Title

Lobbying

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

Name of Prime Contractor

Project Name & Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract.
2. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
3. No segregated facilities will be maintained.

Name & Title of Signer (Print or Type):

Signature Date

SECTION 3 PLAN CERTIFICATION

----- agrees to implement the following specific affirmative action
Name of Contractor
directed at increasing the utilization of lowest income residents and businesses within the
City/Town of _____

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and were advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city /town the necessary number of lower income residents through; Local advertising media, sign placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. * To insert this Section 3 plan in all bid documents, and to require all bidders and subcontractors to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. *To insure that subcontracts which are typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure all appropriated project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda. etc., which document that all the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

As officers and representatives of _____ we, the undersigned, have read
And (Name of Contractor)
fully agree to this Affirm.ative Action Plan, and become a party to the full implementation of this program.

Signature

Title

Date

Signature

Title

Date

CERTIFICATION OF BIDDER

FEDERAL LABOR STANDARDS PROVISIONS- DAVIS BACON ACT AND “RELATED ACTS”

This certification is required to insure that the Bidder understands that the Project or Program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the form HUD-4010, “Federal Labor Standards Provisions” are included in any such contract, pursuant to the provisions applicable to such Federal assistance.

The Bidder certifies receipt of form HUD-4010, “Federal Labor Standards Provisions”, must be included and attached to each and every construction bid document and/or construction contract greater than \$2,000, that is subject to the Davis-Bacon Act and “Related Acts.”

Wage Determination – The Wage Determination applicable to this project is:

Determination

Number:

Modification

A hard copy of this Determination must be included within these bid specifications.

Wage Determination Posting – Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal wage rate determinations and the required labor standards provisions summarized by form **HUD-4010, “Federal Labor Standards Provisions.”**

Weekly Certified Payrolls – It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). **It is the responsibility of the undersigned (prime contractor) to review payrolls submitted by subcontractors to ensure that there are no discrepancies or underpayments.**

CERTIFICATION BY BIDDER

Name and Address of Bidder (Include ZIP Code):

Name and Title of Signer (Please print or type below:)

Signature

Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATIERS
PRIMARY COVERED TRANSACTIONS**

In accordance with the code of Federal Regulations, Part 49 CFR Section 29.510, the prospective primary participant _____ (name of Authorized Agent), _____ (Title), being duly sworn (or under penalty of perjury under the laws of the United States), certifies to the best of his/her knowledge and belief, that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall list exceptions below.

Exceptions will not necessarily result in denial of award, but, will be considered in determining contractor responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and the dates of the action. Providing false information may result in criminal prosecution or administrative sanctions. If an exception is noted the contractor must contact the Department to discuss the exception prior to award of the contract.

Signature of Authorized Agent

Date

Certification for Federal-Aid Construction/Consultant Contracts

IN ACCORDANCE WITH PUBLIC LAW 101-1210 SECTION 319 (DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES) THE PROSPECTIVE PARTICIPANT CERTIFIES, BY SIGNING AND SUBMITTING THIS BID OR PROPOSAL, TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, THAT:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

(R.I.D.O.T. APPENDIX C)

Revised: 4/12/2002

**ANTI-COLLUSION CERTIFICATE FOR CONTRACT AND FORCE ACCOUNT
[Unsworn
Declaration]**

Title 23, United States Code, Section 112(c), requires, as a condition precedent to approval by the Director of Public Roads of the contract for this work, that there be filed an unsworn declaration executed by, on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. This unsworn statement shall be in the form of a declaration executed under penalty of perjury under the laws of the United States.

To the: **STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION, DIVISION OF PUBLIC WORKS**

State of _____

County of _____

I, _____,

under penalty under the laws of the United States, do depose and say:

On behalf of _____, of _____ that

said Contractor has not, either directly or indirectly, entered into any agreement,

participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with Rhode Island Contract Number _____

_____, Federal-Aid Project Number

_____, County of _____

Town-City _____, Road-Bridge _____.

Signature: _____ Date: _____

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

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

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

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-00-46), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 - 0348-0046
(see reverse for public burden disclosure)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2 Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-awant</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year ____ quarter ____ date of last report ____</p>
<p>4. Name and Address of Report Entity:</p> <p>If Prime <input type="checkbox"/> D Sub awardee <input type="checkbox"/> Tier ____, if known: Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Sub awardee, F..nler Name and Address of Prime: Congressional District, if known: _____</p>	
<p>6. Federal Department Agency:</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known: _____</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity: (if individuals last name first name mi): _____</p>	<p>10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, mi): _____</p>	
<p>11. Amount of Payment (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check: all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other. specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>	<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including offJCer(s), employee(s), or Member(s) contraction, for Payment indicated in Item 11 (Attach Continuation Sheet(s) SF-LLL-A, if nece, SIII):</p>	
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> yes @ no</p>		
<p>16. Information required by this form pursuant to 31 U.S.C. section 1352. This disclosure or lobbying activity information shall be provided to the public under the provisions of the Freedom of Information Act, 5 U.S.C. 552. This disclosure shall be provided to the public unless it is determined that disclosure would be in the interest of national defense. This information is not to be disclosed to the public under the provisions of the Freedom of Information Act, 5 U.S.C. 552, unless it is determined that disclosure would be in the interest of national defense. Penalties for providing false information: A person who knowingly and willfully provides false information to this form is liable to a fine of not more than \$100,000 and not less than \$10,000 for each such violation.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No: _____ Date: _____</p>	
<p>For Federal use Only:</p>	<p>Authorized for Local Reproduction Standard Form - LLL-A</p>	

CONFLICTS DISCLOSURE POLICY

To ensure that the Rhode Island Department of Transportation (RIDOT) maintains the continued confidence and trust of the people of Rhode Island in carrying out its mission, prospective vendors must disclose any family (or other personal) relationships, associations, or connections that the vendor, its affiliates, or employees, may currently have with any RIDOT employee. A Conflicts Disclosure Statement shall be submitted to RIDOT from the following:

- owners;
- Directors;
- Principals;

Officers, board members, or individuals with corporate authority;

If the vendor is a partnership, the applicant's partners;

If the vendor is a limited liability company, its members and managers;

Employees with decision-making authority, including executive directors, managers or individuals in a similar position with corporate authority; and

Shareholders with a controlling interest.

CONFLICTS DISCLOSURE STATEMENT

RE: _____

I, _____ hereby certify as follows:

I am employed as a _____ of _____
[TITLE] [COMPANY]

and to the best of my knowledge:

PLEASE CHECK THE **APPROPRIATE BOX:**

- I have no family or personal relations currently employed either on a full-time or part-time basis at the Rhode Island Department of Transportation.
- I do have family or personal relations currently employed at the Rhode Island Department of Transportation. Please list their name(s), title(s), and RIDOT Division(s) (if known):

NAME	TITLE	RIDOT DIVISION

If necessary, please add any additional names as attachments hereto.

FOR ILLUSTRATIVE PURPOSES. FAMILY RELATIONS SHALL INCLUDE WHETHER BY BLOOD, ADOPTION OR MARRIAGE. ANY OF THE FOLLOWING RELATIONSHIPS:

Father, Mother, Son, Daughter, Brother, Sister, Grandfather, Grandmother, Grandson, Granddaughter, Father-In-Law, Mother-In-Law, Brother-In-Law, Sister-In-Law, Son-In-Law, Daughter-In-Law, Stepfather, Stepmother, Stepson, Stepdaughter, Stepbrother, Stepsister, Half-Brother Or Half-Sister, Niece, Nephew, And Cousin

If you are unsure whether a relationship, association, or connection you have may need to be disclosed, please consult with RIDOT's Legal Office at (401) 222-6510.

SIGNATURE

DATE

By signing this form you: (1) certify that the Information contained in this form is complete and accurate to the best of your knowledge; and (2) acknowledge your continuing obligation to complete and submit a new Disclosure form when there is any change in your family or personal relations during the course of this Contract.

This document is used for Internal RIDOT purposes only in order to address and avoid any potential conflicts at the inception of the contract process and to avoid any impropriety or the appearance of impropriety during the contract process. Any disclosures made hereto will not prejudice prospective vendors from selection.



**USDOT Standard Title VI/Nondiscrimination
Assurances for Contractors
DOT Order 1050.2A**

I, _____, _____, a duly
authorized representative of _____
do hereby certify that the organization affirmatively agrees to the provisions set forth by *U.S. DOT
Order 1050.2A, DOT Standard Title VI Assurances and Non-Discrimination Provisions (April 11, 2013)*

Signature

Date

APPENDIX A

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

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor **will** so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on

the basis of sex);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101*et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131--12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex indication programs or activities (20 U.S.C. 1681*et seq.*).

Last Update: November 2017

DBE SPECIAL PROVISION

**DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR
CONTRACTORS AND CONSULTANTS**

With respect to the above numbered project, I hereby certify that I am the _____
and duly authorized representative of _____ whose address is _____

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

DEFINITIONS:

A "Broker," for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

A "DBE Contractor" or "DBE Subcontractor," for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

"Disadvantaged Business Enterprise" or "DBE," for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

A "Manufacturer," for purposes of this provision, is a DBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.

A "Regular Dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the

Rev.09/26/2017

public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

"Race conscious" measures (goals) or programs are those that are focused specifically on assisting DBEs.

"Race neutral" measures (goals) or programs are those that are, or can be, used to assist all small businesses, including DBEs.

"Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian Tribe¹, Alaska Natives, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian Americans," this includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
 - f. Women; and
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

¹ A "tribally-owned concern" means any concern at least 51 percent(51%) owned by an Indian tribe as defined in 49 CFR 26.5.

I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its DBE commitment during the construction period will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the established DBE percentage (listed in Section II. A. below), and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in paragraphs below.
- B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department, or such remedy as the Department deems appropriate. Greater detail of the rules and regulations regarding DBE utilization can be found in the Rules and Regulations for RIDOT DBE Program.
- C. Brokering of work by DBEs is not allowed and is a contract violation unless DBE is a certified DBE broker. A DBE firm involved in brokering of work may have their certification removed or suspended and shall be subject to the sanctions stated herein. Any firm that engages in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in paragraph (B) above and referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, USC Section 1001.
- D. The Disadvantaged Business Enterprises Directory or other available resources may be obtained at the Rhode Island Department of Transportation Office of Civil Rights (OCR), 2 Capitol Hill, Providence, RI 02903, or at <http://odeo.ri.gov/>.
- E. The utilization of Disadvantaged Business Enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the Contractor shall include:
 - 1. The number of DBE contractors, subcontractors and suppliers; and the type of work, materials or services being performed on or incorporated **in this** project.
 - 2. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
 - 3. Documentation of all correspondence, contacts, telephone calls, etc. necessary to obtain the services of DBEs on this project.
 - 4. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
 - 5. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within five (5) days from the opening of bids, the contractor/consultant shall, at a minimum, take the following actions to meet the race-conscious goal established by OCR, hereinafter referred to as the 'contract goal':
 - 1. Appoint an EEO Officer to administer the Contractor's DBE obligations.
 - 2. Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the

- work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
3. Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
 4. Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith effort (GFE) review to determine the extent of the prime contractor's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26, Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
1. Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
 2. Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS:

A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with DBE participation will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for crediting DBE participation toward contract goals are as follows:

1. When a DBE participates in a contract, RIDOT will consider only the value of the work actually performed by the DBE toward DBE goals. RIDOT includes the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT credits the cost of supplies and materials purchased or leased by the DBE subcontractor for the work of the contract. However, supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
2. RIDOT credits the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the **work** of the contract that the DBE performs with its own forces toward DBE goals.

RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function (CUF) on that contract.

1. A DBE performs a CUF when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors. Even if a DBE is performing pursuant to normal industry practices, if those practices, in fact, erode the ability of the DBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE goal and may raise questions about the DBE eligibility.
2. Suppliers: A supplier is considered to perform a CUF when it packages, i.e. takes quotes from several manufacturers, and/or sells from its own inventory in order to provide one or more items to a contractor. A supplier may own a franchise and/or may be a factory representative to one or more manufacturers. Consistent with a contractor's probable needs, a supplier, not a contractor, may place orders for production with manufacturers.
3. "Pass through" supply operations occur when the contractor decides what items shall be bought from what sources and/or agrees directly with the manufacturer, or other non-DBE party, to schedule delivery and/or directs adjustments and/or routes payments and purchase orders through the DBE. Pass through operations are not commercially useful functions and will not be counted toward contract goals.
4. Management: The DBE must manage the work that has been contracted to its firm. The DBE owner must supervise daily operations, either personally, or with a full-time, skilled, and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be present on the job site and under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.
5. Workforce: In order to be considered an independent business, a DBE must keep a regular workforce. DBEs cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control, see paragraph 9 of this section. The DBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.
6. Trucking: RIDOT will consider the following factors in determining whether a DBE trucking company is performing a CUF. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - a. The DBE itself must own and operate at least one fully licensed, insured, and operational vehicle being used on the contract.
 - b. The DBE must receive compensation for the total value of the services it provides on the contract using vehicles it owns, insures, and which are operated by drivers it employs.
 - c. The DBE may lease vehicles from another DBE firm, including an owner-operator who is certified as a DBE. The DBE which leases vehicles from another DBE shall receive credit for the total value of the services the lessee DBE provides on the contract.
 - d. The DBE may also lease vehicles from a non-DBE firm, including from an owner-operator. The DBE which leases vehicles from a non-DBE is entitled to credit for the total value of

services provided by non-DBE lessees not to exceed the value of services provided by DBE-owned vehicles on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this subsection (6) (d): DBE firm X uses two of its own trucks on a contract. It leases two trucks from DBE firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by firm X and firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by firm Z, DBE credit could be awarded only for the fees or commission pertaining to those trucks firm X receives as a result of the lease with firm Z.

- e. For purposes of this subsection, a lease must indicate that the DBE has exclusive use of and control over vehicles used on the project. This does not preclude vehicles from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased vehicle. Leased vehicles must display the name and identification number of the DBE.
7. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation. *RIDOT* will count expenditures with DBEs for materials or supplies toward DBE goals as follows:
- a. For a DBE contractor (furnish and install) to receive credit for supplying materials, the DBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.
 - b. If the materials or supplies are purchased from a DBE manufacturer, *RIDOT* will count 100 percent of the cost of the materials or supplies.
 - c. If the materials or supplies are purchased from a DBE regular dealer, *RIDOT* will count 60 percent of the cost of the materials or supplies toward DBE goals.
 - d. With respect to flaggers, when flaggers are provided, *RIDOT* will count 60 percent of the labor. When traffic signs are included with flaggers, the work will be counted as 100 percent.
 - e. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, *RIDOT* will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, toward DBE goals, provided *RIDOT* determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by *RIDOT* after receiving the Broker's Affidavit Form from the DBE. *RIDOT* will not count any portion of the cost of the materials and supplies themselves toward DBE goals.
8. Subcontractor: A subcontractor arrangement exists when a person or firm has a contractual obligation to perform a defined portion of the contract work and the following conditions are present:
- a. Compensation is determined by the amount of work accomplished, rather than being paid on an hourly basis,
 - b. The subcontractor exercises control over work methods (except as limited by project specifications), while furnishing and managing its own labor and equipment with only minimal, general supervision being exercised by the prime contractor.

- c. The personnel involved in the DBE subcontractor's portion of the project are both under the subcontractor's direct supervision and id notified on its payroll records. When warranted by unique circumstances of a project, a DBE subcontractor may be permitted to employ on a limited basis specialty trades personnel who are not normally employed by the DBE subcontractor.
 - d. Second tier DBE subcontracting will be approved only in accordance with normal industry practice and when the type of work differs from work which the DBE usually performs.
9. All factors pertaining to the unique conditions of a project shall be considered in determining whether a DBE subcontractor relationship actually exists on the project. A DBE subcontractor may need to lease/rent equipment, other than over-the-road trucks, and/or augment its workforce with additional skilled personnel in order to perform certain project-related work. The DBE subcontractor is required to arrange for the necessary equipment through rental/leasing agreements, as necessary. (Off-the-road equipment, such as "Euclids," may be rented/leased from the prime contractor even though the CUF guidelines prohibit rental/lease of over-the-road trucks from the prime contractor.) Likewise, in limited instances, the prime contractor may provide some, but not all, personnel to the DBE subcontractor when the following conditions are present:
- a. A DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
 - b. The DBE must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
 - c. The personnel must have a specialized expertise which has not been mastered by the DBE's own skilled/supervising/managerial personnel.
 - d. Such personnel must be placed on the DBE's payroll and come under the direct supervision of the DBE for the performance of the particular subcontract work.
 - e. The deployment of such personnel must be accomplished within the framework of a mentor-protege agreement; or for emergency purposes, by contract change order. All instances of combining personnel must be for developmental purposes in which teaching/demonstration/consulting to the DBE must occur.
 - f. Long term, continual (e.g. from one contract to another) or chronic use by a DBE firm, of personnel normally employed by another specific firm, lacking a mentor-protege agreement which is being carried out in good faith, is not consistent with the CUF guidelines.
 - g. To place entire work crews on DBE's payrolls when such personnel are normally employed by another specific firm is not consistent with the CUF guidelines.
 - h. A DBE may need to lease/rent equipment, except for over-the-road trucks, **in** order to be properly equipped to execute the work of a mentor-protege agreement. In such cases where the DBE has investigated several possible sources of such equipment within a reasonable geographical area to the project, the DBE may find the best offer was made by the prime contractor or another subcontractor on the project. In such cases, the DBE may rent/lease such equipment from the prime or another subcontractor, provided that the use of such equipment is material to demonstrating/teaching objectives set forth in the mentor-protege agreement. Thus, the DBE's regular employees, not those temporarily furnished by the prime contractor, or another subcontractor, shall operate such equipment for the majority of the time during which the equipment is used in the work of the DBE subcontractor under the mentor-protege agreement.
 - i. A DBE's use of equipment owned by a prime contractor or another subcontractor or without an appropriate mentor/protege program is inconsistent with the CUF guidelines and wm result in noncompliance.
10. If a contractor or subcontractor is not certified as a DBE by the Minority Business Enterprise Compliance Office under the specific NAICS code of line items identified in the contract, at the

- time of the execution of the contract or issuance of the purchase order, RIDOT will not count that firm's participation toward any DBE goals, except as provided in 49 CFR 26.87(i).
11. RIDOT will not count toward the contract goal the dollar value of work performed by a contractor or subcontractor after it has ceased to be a certified DBE.
 12. RIDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until all payments being credited have been fully paid to the DBE.

B. DBE Replacement and Termination:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each *is* listed unless the contractor obtains RIDOT's written consent as provided in this section; and unless RIDOT's consent is provided under this paragraph, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

1. Good Cause for Replacement or Termination

The prime contractor must provide the Department's OCR with a copy of its "Intent to Substitute /Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate good cause and obtain written approval from the OCR.

In accordance with 49 CFR Part 26.53 good cause includes the following circumstances:

- a. The listed DBE subcontractor fails or refuses to execute a written contract;
- b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- f. RIDOT determines that the listed DBE subcontractor is not a responsible contractor;
- g. The listed DBE subcontractor voluntarily withdraws from the project and provides to RIDOT written notice of its withdrawal;
- h. The listed DBE is ineligible to receive DBE credit for the type of work required;

- i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- j. Other documented good cause that RIDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that RIDOT deems appropriate.

2. Good Faith Efforts to Replace

When a DBE subcontractor is terminated as provided in paragraph (l) of this section, or fails to complete its work on the contract for any reason, RIDOT requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal RIDOT established for the procurement. The good faith efforts shall be documented by the contractor. If RIDOT requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and RIDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. The determination shall be made by the DBELO, under the criteria established below.

If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the change order as well as to the original contract. In the event of significant change orders, good faith efforts are required dependent upon the type of change order; RIDOT determines on a case-by-case basis what constitutes good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant. When a change order decreases work, i.e. RIDOT determines specific line items are no longer necessary on a contract or there is a quantity change on an item, no good faith effort must be shown. However, when an increase of work occurs or there is a termination of a DBE, good faith efforts must be shown in accordance with the preceding requirements.

C. Monthly Payment Certifications:

All contractors on RIDOT projects are required to certify their payments to subcontractors by use of RIDOT's contractor compliance software on a minimum of a monthly basis (which, at time of publishing, is Prism). A project may not proceed to finalization without the input of this information. RIDOT's Prompt Payment Clause applies to both DBE and non-DBE subcontracts. The Contractor is responsible for the subcontractors' compliance with the submission of their payment reporting by way of this software.

D. Joint Check Procedure for DBEs:

A prime contractor must receive written approval by the Department's DBELO before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime contractor to the Department's OCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

1. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE;
2. The second party (typically the prime contractor) acts solely as a guarantor;
3. The DBE must release the check to the supplier;
4. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only; and
5. The DBE remains responsible for negotiation of price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the Resident Engineer certification of the dollars paid to each DBE firm using Form "DBE Request for Verification Payment." The certification shall be dated and signed by a responsible officer of the Contractor and by the DBE. Falsification of this certification will result in sanctions listed in Sections I. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and subcontractor on the "Certification of Progress Payment" form, the Prime Contractor shall release all retainage held by the Prime Contractor within thirty (30) days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

Signature of Contractor or Consultant

Date

CITY OF CENTRAL FALLS

**JENK PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

APPENDIX B

GENERAL CONDITIONS

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GENERAL CONDITIONS

See also the General Conditions provided in the Technical Specifications.

This project shall follow the State of Rhode Island Standard Specifications for Road and Bridge Construction

- A. Note: The State of Rhode Island Standard Specifications for Road and Bridge Construction consists of the following:
- The Rhode Island Standard Specifications for Road and Bridge Construction, Amended March 2018, with all revisions and compilations.
 - The Rhode Island Standard details, 1998 Edition with all revisions and updates.
 - The Rhode Island Bridge Standard details, 2010 Edition with all revisions.
- B. All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the City. All such information is furnished only for the information and convenience of bidders and is not guaranteed.
- C. **Summary of Contract Dates:**
- Bid Opening: To be posted as an addendum on the city's website.
Pre-Bid Meeting: **September 26th, 2022**
All questions from Bidders must be submitted to the city no later than September 28th, 2022.
The Bidder will guarantee that the work will begin within seven (7) calendar days from the "Notice to Proceed."
The playground is to be completed by June 1, 2023, and tower repairs are to be completed by August 31, 2023.

The Rhode Island Department of Transportation, Standard Specifications for Road and Bridge Construction, including latest revisions, addenda and compilations shall be referenced by these specifications as the "Standard Specification" or "Specifications". If two details or specifications are similar, the City detail shall take precedence unless directed otherwise by the City.

In various places of the specifications and bid package, the words "State", "Department" "Owner", and "Engineer" are intended to mean the "City of Central Falls" or its assigned representative.

The Contractor shall comply with all funding source requirements.

The "City of Central Falls" will be providing construction project administration and will be in charge of the work and will make all decisions in its own behalf. A representative of the City may be present during the work and will inspect this project at completion.

For the work, any field engineering or survey layout, etc. is the responsibility of the Contractor. The Contractor shall be responsible to verify if basement vaults extend under the sidewalk to be repaired or installed. Any damage to underground basement vaults shall be repaired by the Contractor at no additional expense to the City. The Contractor shall avoid damage as a result of their operations to existing sidewalks, streets, curbs, pavements, utilities, adjoining property, trees etc. and shall at his own expense completely repair any damage thereto caused by his operations. Restoration of damaged trees will be determined by the City and may include monetary damages and/or replacement of affected trees.

The Contractor shall conform to all requirements of the Department of Public Works, General Street Closing & Emergency No Parking Signs Posting Permit Guidelines.

All traffic control, including cones, barricades (except drum barricades), temporary traffic control signs and detour signs shall be considered incidental to the work, with no additional payment by the City. Work zones must be signed in accordance with the Manual on Uniform Traffic Control Devices.

The Contractor shall provide notice to abutters at least 24 hours before sidewalk or driveway work will be performed. When installing cement concrete driveways, the Contractor shall provide at least 48 hours' notice that the driveway will be inaccessible while grading, forming, pouring and curing. The notices shall state the Contractor's name, a statement that the Contractor is working for the City of Central Falls, a contact name and phone number for the contractor and the date and time that the driveway will be accessible. The Contractor shall remove all warning tape and stakes when the driveway is accessible. The Contractor shall also coordinate with the City Parking Administrator when residents are displaced during a driveway pour. The Parking Administrator will coordinate with the Central Falls Police Department to allow for overnight street parking.

SECTION 100.9902 SCHEDULE OF SALARIES AND WAGES

The rates of payment of wages, obligations and charges for labor by the contractor shall be not less than those shown on the current schedule of customary and prevailing rates of wages supplied by the United States Department of Labor, in accordance with R.I. General Laws Sec. 37-13-1 et seq. As amended). Current wage rates may be obtained at the following website:
<https://www.wdol.gov/dba.aspx>

105.21 GENERAL SEQUENCE OF WORK

Sequence and scheduling of the Work shall be submitted to the Contractor by City. The City reserves the right to indicate the sequence of work prior to construction.

105.22 COORDINATE WITH UTILITY COMPANIES

The Contractor shall notify the affected Utility companies at least fourteen (14) calendar days prior to commencing work in the location of the respective utility.

The purpose of this advanced notification is to allow the utility company ample time to adjust, reconstruct or reset utility features within the influence of the Work of the roadways and sidewalks scheduled for construction.

105.23 COORDINATE WITH LOCAL PUBLIC AGENCY'S MATERIALS AND METHODS TESTING

Concrete, asphalt and soils testing will be tested randomly as determined by the Engineer. The concrete testing will be performed by the Owners selected Testing agency and/or the Engineer. Costs for testing will be borne by the Owner. Concrete and asphalt not meeting the requirements of the specification and/or the approved shop drawings (mix design) will be rejected.

The Contractor shall provide the Engineer 48 hour notice for testing materials and methods.

The Contractor shall cooperate with the Local Public Agency's selected testing agency and all others responsible for testing and inspecting the Work.

Authorized representatives performing the testing shall have access to the Work at all times and at all locations where the Work is in progress. The Contractor shall provide facilities for such access to enable the personnel to perform their functions properly.

All specimens and samples for testing, unless otherwise provided in the Contract Documents shall be taken by the testing personnel.

With the exception of some testing to be performed by the Engineer all sampling equipment

and personnel will be provided by the testing laboratory.

All deliveries of specimens and samples to the testing laboratory will be performed by the testing laboratory.

Concrete and bituminous mixes will be subject to inspection and testing at the mixing plants and at the locations of installation for compliance with quality requirements.

105.24 SECURITY

The Contractor shall provide security personnel for all work and materials which will otherwise be unattended during cure time or while the site is unattended during non-working hours. All work damaged during this cure time or unattended time shall be removed and reconstructed at the Contractor's expense.

105.25 DISPOSAL OF MATERIAL

The disposal of any excess or unsuitable material including earth, pavement, debris from demolished structures of all types, vegetative matter and any other material either found on the work site or brought to the site by the contractor or subcontractors will be in accordance with all applicable local, State and Federal laws. The following procedures will be encountered during the prosecution of work:

1. Under no circumstances will any material be deposited in a freshwater or coastal wetland or regulated areas. The Contractor must obtain the permission of the Engineer prior to on site disposal of material.
2. The off-site disposal of any material will be allowed only by written permission of the property owner upon whose property the material is to be deposited. The Contractor must furnish a copy of said written permission.
3. For all off-site disposal areas, it will be the Contractor's responsibility to obtain the approval of the Department of Environmental Management, the Coastal Resources Management council, and any other governmental agency as necessary.

The above procedures will be performed by the Contractor at no additional cost to the Agency or City. Under these procedures, the Contractor retains all responsibilities and liabilities under City, State and Federal laws for violations resulting from disposal of material from the project and will defend and hold the Agency and City harmless there from.

Removal and disposal of the Asbestos Cement materials shall be according to all current City, State and Federal regulations.

105.26 "DIG SAFE" LAW

The Contractor shall comply with the Rhode Island General Law, Chapter 39-1.2, "Excavation Near Underground Utility Facilities" which became effective on July 1, 1984.

Before commencing with the construction of any work, identify any water main, gas main, telephone duct, electric duct, and/or other utility present which is or could be in conflict with the proposed work. Relocation of the affected utilities shall be done as directed by the Local Public Agency and in accordance with the requirements of the corresponding utility company.

The attention of the Contractor is directed to the fact that certain utility companies may not fall under the provisions of "DIG SAFE". Individual utility company notifications by the Contractor shall be necessary to insure proper notification and protection of all existing utilities affected by this Contract. This includes, but is not limited to City assets.

105.27 CONSULTANT

A firm may be hired by the Local Public Agency to provide Inspection Services and the associated Contract Administration for individual portions of the Project and refers to any one or combination of employees of the Consultant such as Project Manager and Inspector. The Consultant will perform the majority of the duties assigned to the "Engineer" in these Contract Documents.

105.28 PROGRESS MEETINGS

The Engineer will schedule and administer progress meetings and specially called meetings throughout the duration of the Work if deemed necessary by the Engineer.

The time and location of such meetings shall be designated by the Engineer and shall be convenient for all parties involved.

The Engineer will, prepare agenda with copies for participants, preside at meetings, records minutes, and distribute copies to participants, and those affected by decisions made.

105.29 CONTRACTORS WORKING HOURS

Work shall be performed during normal business hours, Monday through Friday, 7:00 AM- 5:00PM. Some jobs may require the Contractor to work outside normal business hours. In this event, the Contractor may request to work on Saturdays and Sunday or during the night, only with approval by the City. Such restrictions shall not be the basis for damages or claims against the City.

The Contractor's attention is also directed to the fact that it may be deemed necessary to perform various items of work during off-peak traffic hours, during early morning or late at night. The City will dictate these special conditions prior to awarding work to the Contractor.

The Contractor shall not be entitled to any additional compensation from the City for any expenses including premiums on labor that may be incurred by change of working hours and/or scheduling.

105.30 DRIVEWAY PERMITS

The Contractor shall not begin work on any new driveway until the required driveway permit is in place.

The Contractor will coordinate the schedule of driveway work with the Engineer to allow for the application process and procurement of the required permits. The Local Public Agency will provide and pay for the driveway permits.

105.33 CITY FORESTER

The Contractor shall be required to have all proposed tree work, which includes as a minimum all trimming, root pruning, tree removal, tree planting or tree well work approved by the City Forester.

The Contractor's attention is directed to the requirement that all sidewalks are to be a minimum of 36- inches wide, and the City Forester is to be notified when that minimum width cannot be met due to interference with an existing tree.

The Contractor shall coordinate the scheduling of the City Forester with the Engineer. The Engineer shall be present during the City Forester evaluation and document the outcome.

105.35 SCHEDULE OF VALUES

Within 14 calendar days of the date of the executed Contract, the Contractor shall submit a list detailing the breakdown of any lump sums bid for review and concurrence by the Engineer. This list will be used by the Engineer as a guide in approving estimates for payment. The list shall be an accurate representation of costs required to complete the Work in accordance with the Contract Documents.

A schedule (cash flow) of the monthly value of work done based on the Progress Schedule shall be submitted within 14 calendar days of the date of the executed Contract. The schedule shall show the total sum of work done for each month of the projected construction period and shall be updated monthly to reflect the actual amount requisitioned for payment.

105.37 BITUMINOUS AND PORTLAND CEMENT CONCRETE

Bituminous and Portland cement concrete shall only be supplied from a RIDOT approved plant.

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FEDERAL CONSTRUCTION CONTRACT PROVISIONS

(Contracts over \$100,000)

**STATE OF RHODE ISLAND
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

RI Office of Housing & Community Development

One Capitol Hill, 3rd Floor

Providence, RI 02908

Note: This document is to be used as a guide for contractors and subcontractors working on Community Development Block Grant projects in the State of Rhode Island. It is not verified to be all inclusive and the contractor is fully responsible for complying with all federal regulations applicable to the CDBG program.

REQUIRED CONTRACT PROVISIONS TO BE PROVIDED BY RECIPIENT

(To the best of our knowledge, federal templates are not currently available for items A and B, below. Grant recipients must develop/use their own contract language to meet the requirements specified below.)

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;
 - b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- Instructions for Certification (B)**
1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
 2. 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.
 3. 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 when submitted or has become erroneous by reason of changed circumstances.
 4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.
 5. 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.
 6. 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.
 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower 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.

Applicant	Date
Signature of Authorized Certifying Official	Title

Opportunity Certification
Excerpt From 41 CFR §60-1.4(b)

Office of Housing
Federal Housing Commissioner

OMB Control No. 2502-0029
(exp. /3 /20)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

Firm Name and Address	By
	Title

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:
During the performance of this contract, the contractor agrees as follows:
 - (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.
 - (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
 - (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:
 - (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.
 - (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;
 - (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;
 - (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and
 - (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

§401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the

invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c)) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such

other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause.

As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the

capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. *DOE* will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

Clean Water Requirements

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the State.

CLEAN AIR

42 U.S.C. 7401 *et seq*

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by OHCD/HUD.

Source: Federal Transit Administration. http://www.fta.dot.gov/12831_6195.html#BM7

Lobbying

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Title 37: Patents, Trademarks, and Copyrights

[PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS](#)

§401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure

to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and

affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h)) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

- (1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;
- (2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review

the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

(Complete According to Instructions at 401.5(b))

(b)) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. *DOE* will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

Procurement of Recovered Materials

a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

Source: form HUD-5370-C

§ 135.38 Section 3 Clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING

*TECHNICAL ASSISTANCE ON FORM HUD-60002

Why HUD Enforces Section 3?

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

Applicability of Section 3 to Community Planning & Development Assistance

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a *combined* (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

Section 3 Covered Community Planning and Development funding

- Community Development Block Grants (CDBG)
- Home Investment Partnership Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stimulus Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

Section 3 Covered Recipient Agencies

“Recipient” refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- States; Units of Local Government; Native American Tribes; or other Public Bodies
- Public or Private Nonprofit Organizations
- Private Agencies or Institutions
- Mortgageors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- Successors, assignees or transferees of any such entity listed above
- Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

Triggering the Requirements of Section 3

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

Recipient Responsibilities Pursuant to Section 3

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for **new** employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Residents and Business Concerns

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

Section 3 Summary Reports (Form HUD-60002)

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.

Determining What Should Be Reported on Form HUD-60002

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/activities during the specified reporting period.
- The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.
- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

Section 3 Reporting and Compliance Determinations

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

Important Notes for Submitting Form HUD-60002

- Recipients must submit a separate form HUD-60002 for each type of covered funding (*e.g.*, separate reports must be submitted for CDBG and HOME funding).
- Use the online Section 3 Summary Reporting System at: www.hud.gov/section3 to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.
- The “reporting period” option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.
- If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

Where Are Reports Submitted

Form HUD-60002 must be submitted to HUD's Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: www.hud.gov/section3.

Recipients can also download a hard copy of form HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development
Attn: Economic Opportunity Division
451 Seventh Street, SW
Room 5235
Washington, DC 20410
202-708-1286 (fax)

Additional Section 3 Guidance and Technical Assistance

The Economic Opportunity Division is committed to providing recipient's guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at: www.hud.gov/section3. This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD's Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System(form HUD-60002)
- Downloadable Forms
- Contact Information for Economic Opportunity Division staff
- Email inquiries on Section 3 can be sent to section3@hud.gov

CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

Name of Prime Contractor

Project Name & Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract.
2. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
3. No segregated facilities will be maintained.

Name & Title of Signer (Print or Type):

Signature Date

SECTION 3 PLAN CERTIFICATION

----- agree to implement the following specific affirmative action
Name of Contractor

Directed at increasing the utilization of lowest income residents and businesses within the City/Town of

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and were advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan..
- B. To attempt to recruit from within the city /town the necessary number of lower income residents through; Local advertising media, sign placed at the proposed site for the project, and community organizations and public or private institutions .operating with fu or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Progr!IJ:fl,Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral. from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. * To insert this Section 3 plan in all bid documents, and to require all bidders and subcontractors to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. * To insure that subcontracts which are typically let on a negotiated rather than bid basis in areas other than Section 3 covered project aJ.t.a.S, are also let on e. negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To install appropriated project area business concerns are notified of pending sub contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda. etc., which document that all the above affirmative action steps have been taken.
- I To appoint ~~re~~ an executive official of the company or agency as Equal Opportunity Office to coordinate the implementation of the Section 3 Plllll:

As officers and representatives of _____ we, the undersigned, have read and

(Name of Contractor)

fully agree to this Affirm.ati.ve Action Pl.an, and become a party to the full implementation of this program.

Signa

Signatum

Date;

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

- HUD Field Office: Enter the Field Office name .
1. Recipient: Enter the name and address of the recipient submitting this report.
 2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
 3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
 - 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
 6. Reporting Period: Indicate the time period (months and year) this report covers.
 7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2)** The classification is utilized in the area by the construction industry; and
 - (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215- 0140.)
- (c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215 -0140.)
- (d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

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

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/w hd/forms/w h347inst r. htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under subparagraph A. 3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to, and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

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

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

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

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

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; Liability for unpaid wages; Liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages.

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 U S C 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

CERTIFICATION OF BIDDER

FEDERAL LABOR STANDARDS PROVISIONS- DAVIS BACON ACT AND “RELATED ACTS”

This certification is required to insure that the Bidder understands that the Project or Program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the form HUD-4010, “Federal Labor Standards Provisions” are included in any such contract, pursuant to the provisions applicable to such Federal assistance.

The Bidder certifies receipt of form HUD-4010, “Federal Labor Standards Provisions”, must be included and attached to each and every construction bid document and/or construction contract greater than \$2,000, that is subject to the Davis-Bacon Act and “Related Acts.”

Wage Determination – The Wage Determination applicable to this project is:

Determination Number:

Modification Number:

Date:

A hard copy of this Determination must be included within these bid specifications.

Wage Determination Posting – Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal wage rate determinations and the required labor standards provisions summarized by form **HUD-4010, “Federal Labor Standards Provisions.”**

Weekly Certified Payrolls – It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). **It is the responsibility of the undersigned (prime contractor) to review payrolls submitted by subcontractors to ensure that there are no discrepancies or underpayments.**

CERTIFICATION BY BIDDER

Name and Address of Bidder (Include ZIP Code):

Name and Title of Signer (Please print or type below:)

Signature

Date

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243)

TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1235-0008
Expires: 02/28/2018

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date _

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ on the _____ (Contractor or Subcontractor) _____; that during the payroll period commencing on the _____ (Building or Work) _____ day of _____, and ending the _____ day of _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full _____ (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable

basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c)

EXCEPTIONS	
EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Wage/Fringe Benefit Certification

(To be completed by contractor/subcontractors prior to contract award.)

GRANTEE: _____ GRANT: _____ PROJECT: _____

This is to certify that _____ plans to use the following classifications of workers on the above referenced project:

Classification	From Applicable Wage Decision			Base Wage to be paid by Contractor	Fringe Benefits to be provided by Contractor		Total Package to be paid by Contractor
	Base Wage Due	Fringe Benefits Due	Total Package Due		Benefit	Hourly Amount	
1.			Lmm				
Lm							
Lm							
m Lm							
						Lm	
Lm			L..				
			lmm				
							Lmm

Certified by: _____ Title: _____ Date: L

(Must be certified by Owner or Chief Financial Officer)

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant

estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone.

If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

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CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

APPENDIX C

PROPOSAL

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CITY OF CENTRAL FALLS
JENKS PARK IMPROVEMENTS PHASE 1
CONTRACT NO. 2022-0007

THE * BID PROPOSAL*** OF**

(Name of Proposer)*

HEREINAFTER CALLED THE "BIDDER"

SUBMITTED IN RESPONSE TO THE INVITATION TO BID

ISSUED ON: September 20, 2022

ISSUED BY: City of Central Falls

TITLE OF CONTRACT: Jenks Park Improvements Phase I

CLOSING DATE: October 6, 2022

CLOSING TIME: 2:00 PM LOCAL TIME

**ADDRESS AT WHICH BIDS
ARE TO BE RECEIVED:**

City of Central Falls
Office of the Purchasing Agent
City Hall
580 Broad Street
Central Falls, RI 02863

**Insert Name of Corporation, Partnership or Individual as applicable.*

TO: The City of Central Falls (hereinafter called the “City”)

- 2. The undersigned Bidder, pursuant to and in compliance with the all proposed Contract Documents relating to:

**Jenks Park Improvements Phase I
Contract No. 2022-0007**

including the following addendum*

*IMPORTANT NOTICE TO BIDDERS: If the Bidder has received any addendum, the reference number of each addendum must be entered in the appropriate space (or spaces) above. Failure to do so may result in the rejection of your Bid.

Having become thoroughly familiar with the terms and conditions of the proposed Contract Documents and with local conditions, and having fully inspected the project site limits of work shown on all plans with all particulars, hereby proposed and agrees to fully furnish and deliver specified supplies and/or services within the time stated and in strict accordance with the proposed contract Documents, including furnishing any and all incidental labor and materials, in accordance with the Contract Documents, for the following stipulated sums of money:

BID ITEMS

ITEM NO.	BASE BID - LUMP SUM*
1	<p>For purposes of bid comparison, Base Bid lump sum price shall include all work as specified or indicated in the contract documents with the exception of work outlined in the Add Alternate items priced below:</p> <p>Lump Sum Price in Figures: \$ _____</p> <p>Lump Sum Price in Words: _____</p> <p>_____</p>

*Proposals must also include a Schedule of Values to comply with AIA Form G703.

Include unit prices for the following items in the event that additional work is needed beyond the base bid scope shown on the drawings:

ITEM NO.	POTENTIAL ADDITIONAL WORK – UNIT PRICE
AW-1	<p>Unit Price for any additional Masonry Repair or Repointing that may be needed beyond the base bid scope shown on the drawings:</p> <p>Unit Price in Figures: \$ _____</p> <p>Unit Price in Words: _____</p> <p>_____</p>
AW-2	<p>Unit Price for any additional Structural Crack Repair that may be needed beyond the base bid scope shown on the drawings:</p> <p>Unit Price in Figures: \$ _____</p> <p>Unit Price in Words: _____</p> <p>_____</p>
AW-3	<p>Unit Price for replacing Roof Sheathing Boards in the event they are damaged with roofing removal or found to be deteriorated:</p> <p>Unit Price in Figures: \$ _____</p> <p>Unit Price in Words: _____</p> <p>_____</p>

ITEM NO.	POTENTIAL ADDITIONAL WORK – UNIT PRICE
AW-4	Unit Price for replacing Rafters in the event they are damaged with roofing removal or found to be deteriorated: Unit Price in Figures: \$ _____ Unit Price in Words: _____ _____

ITEM NO.	ADD ALTERNATES – UNIT PRICE	ESTIMATED QUANTITY	SUBTOTAL AMOUNT
ALT-1	Site Bench Unit Price per Item in Figures: \$ _____ Unit Price per Item in Words: _____ _____	8	Subtotal in Figures: \$ _____ Subtotal in Words: _____ _____
ALT-2	Granite Entry Pillar Unit Price per Item in Figures: \$ _____ Unit Price per Item in Words: _____ _____	2	Subtotal in Figures: \$ _____ Subtotal in Words: _____ _____

1. The undersigned Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding, but that this bid shall remain open and not be withdrawn for a period of 60 calendar days from the date prescribed for its opening.
2. If written "Notice of Award" of this bid is mailed or delivered to the undersigned Bidder thereafter before it is withdrawn, the undersigned will execute and deliver the Contract Documents to the City in accordance with this bid as accepted, and will also furnish and deliver to the City such documents, schedules or listings, as are stipulated within the Contract Documents, all within fifteen days after personal delivery or after deposit in the mail of the notification of award and acceptance of this bid.

3. The undersigned Bidder understands that nothing contained herein or in any contract arising out of an acceptance of this bid proposal shall represent any form of exclusive agreement between the City and the successful Bidder for furnishing like supplies and/or services as those specified; and that the City, during the period of any resulting contract, reserves the right, as it judges to be in its best interest, to solicit bids and enter into contract(s) with others for like supplies and/or services.
4. Attached herewith as part of this Bid Proposal is a copy of the "Rhode Island State Equal Opportunity Office Employment Opportunity Certificate of Compliance" completed and signed by the undersigned Bidder (or his duly authorized representative).
5. The undersigned Bidder declares that this proposal in all respects is fair and made without collusion with any other person, firm or corporation making a proposal for this work.
6. Attached herewith as part of this Bid Proposal is a copy of the "Rhode Island State Equal Opportunity Office Employment Opportunity Certificate of Compliance" completed and signed by the undersigned Bidder (or his duly authorized representative).
7. The undersigned Bidder, herein referred to as the Contractor, shall be responsible for his and every part thereof, and for all materials, tools, appliances, and property of every description used in connection therewith. The Contractor agrees to indemnify and save harmless the City against any loss or expense by reason of liability imposed by law upon the Contractor, all sub-contractors, or City for any damage because of bodily injury, including death, at any time, resulting therefore, accidentally sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance of this work whether such injuries to persons or damage to property are due to claimed to be negligence, including gross negligence, or a sub-contractor, the City, or any other person.

Respectfully submitted,

*Name of Company**

By: _____ Title: _____

Business Address: _____

_____ SEAL

Business Telephone: _____

*(apply corporate seal if
bid is by a corporation)*

*Note: Insert Bidders name

(Bidders attention is directed to additional signature requirements of Bid Proposal, below, for Corporations or Partnerships)

If Bidder is a CORPORATION, complete the following section:

A Corporation organized under the laws of the _____
(enter State where incorporated)

Composed of officers as follows:

President Vice President

Secretary Treasurer

At a duly authorized meeting of the Board of Directors of the

_____ held on _____
(Name of Corporation) (Date)

at which all the Directors were present or waived notice, it was voted that

_____ (Name) _____ (Officer)

of this company be and he hereby is authorized to execute bidding documents, contracts and bonds in the name and behalf of said company and affix its corporate seal thereto, and such execution of any contract obligation in this company's name on its behalf by such _____ under seal of the company shall be valid and binding upon this company.

A true copy
ATTEST _____
(Clerk)

Place of business _____

I hereby certify that I am the clerk of the _____,
that

_____ is the duly elected _____ of
(Officer)

said company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract above.

_____ Corporate Seal
Clerk

If Bidder is a PARTNERSHIP, complete the following sections:

Co-partners trading and doing business under the Firm name and type

of _____, composed of partners as follows:

(List names of all co-partners composing the firm)

The following partner or partners are authorized to sign bid proposals and contracts on behalf of the partnership:

(List the names and provide the signatures of all partners so empowered.)

(Signatures)

(Print or type)

_____	_____
_____	_____
_____	_____

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CITY OF CENTRAL FALLS

JENKS PARK IMPROVEMENTS PHASE I

CONTRACT NO. 2022-0007

APPENDIX D

**General Wage Rate
Decision Davis Bacon**

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"General Decision Number: RI20210001 07/30/2021

Superseded General Decision Number: RI20200001

State: Rhode Island

Construction Types: Building, Heavy (Heavy and Marine) and Highway

Counties: Rhode Island Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) HEAVY, HIGHWAY AND MARINE CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	01/22/2021
2	03/05/2021
3	04/09/2021
4	04/23/2021
5	06/18/2021
6	07/30/2021

ASBE0006-006 12/01/2019

Rates

Fringes

HAZARDOUS MATERIAL HANDLER
(Includes preparation,

wetting, stripping, removal
 scrapping, vacuuming, bagging
 & disposing of all insulation
 materials, whether they
 contain asbestos or not, from
 mechanical systems).....\$ 36.60 22.40

 ASBE0006-008 09/01/2019

	Rates	Fringes
Asbestos Worker/Insulator Includes application of all insulating materials, protective coverings, coatings & finishes to all types of mechanical systems.	\$ 43.60	29.90

 BOIL0029-001 01/01/2017

	Rates	Fringes
BOILERMAKER.....	\$ 42.42	24.92

 BRR10003-001 06/01/2020

	Rates	Fringes
Bricklayer, Stonemason, Pointer, Caulker & Cleaner.....	\$ 42.55	28.02

 BRR10003-002 03/01/2020

	Rates	Fringes
Marble Setter, Terrazzo Worker & Tile Setter.....	\$ 40.78	28.92

 BRR10003-003 03/01/2020

	Rates	Fringes
Marble, Tile & Terrazzo Finisher.....	\$ 34.10	27.88

 CARP0330-001 01/01/2021

	Rates	Fringes
CARPENTER (Includes Soft Floor Layer).....	\$ 39.72	28.66
Diver Tender.....	\$ 40.72	28.66
DIVER.....	\$ 51.47	28.66
Piledriver.....	\$ 39.72	28.66
WELDER.....	\$ 40.72	28.66

FOOTNOTES:

When not diving or tending the diver, the diver and diver tender shall receive the piledriver rate. Diver tenders shall receive \$1.00 per hour above the pile driver rate when tending the diver.

Work on free-standing stacks, concrete silos & public utility electrical power houses, which are over 35 ft. in height when constructed: \$.50 per hour additional.

Work on exterior concrete shear wall gang forms, 45 ft. or more above ground elevation or on setback: \$.50 per hour additional.

The designated piledriver, known as the "monkey": \$1.00 per hour additional.

 CARP1121-002 01/06/2020

	Rates	Fringes
MILLWRIGHT.....	\$ 39.07	29.15

 ELEC0099-002 06/02/2021

	Rates	Fringes
ELECTRICIAN.....	\$ 43.61	55.71%
Teledata System Installer.....	\$ 32.71	12.57%+14.93

FOOTNOTES:

Work of a hazardous nature, or where the work height is 30 ft. or more from the floor, except when working OSHA-approved lifts: 20% per hour additional.

Work in tunnels below ground level in combined sewer outfall: 20% per hour additional.

 ELEV0039-001 01/01/2021

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 55.03	35.825+A+B

FOOTNOTES:

A. PAID HOLIDAYS: New Years Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

B. Employer contributes 8% basic hourly rate for 5 years or more of service of 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

 ENGI0057-001 12/01/2020

	Rates	Fringes
Operating Engineer: (power plants, sewer treatment plants, pumping stations, tunnels, caissons, piers, docks, bridges, wind turbines, subterranean & other marine and heavy construction work)		
GROUP 1.....	\$ 42.55	27.70+a
GROUP 2.....	\$ 40.55	27.70+a
GROUP 3.....	\$ 36.17	27.70+a
GROUP 4.....	\$ 33.32	27.70+a
GROUP 5.....	\$ 39.60	27.70+a
GROUP 6.....	\$ 30.40	27.70+a
GROUP 7.....	\$ 24.40	27.70+a
GROUP 8.....	\$ 36.25	27.70+a
GROUP 9.....	\$ 40.17	27.70+a

a. BOOM LENGTHS, INCLUDING JIBS:

150 feet and over + \$ 2.00
180 feet and over + \$ 3.00
210 feet and over + \$ 4.00
240 feet and over + \$ 5.00
270 feet and over + \$ 7.00
300 feet and over + \$ 8.00
350 feet and over + \$ 9.00
400 feet and over + \$10.00

a. PAID HOLIDAYS:

New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

a. FOOTNOTES:

Hazmat work: \$2.00 per hour additional.
Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks

GROUP 2: Digging machine, Ross Carrier, locomotive, hoist, elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, graders, front end loader (3 yds. and over), vibratory hammer & vacuum truck, roadheaders, forklifts, economobile type equipment, tunnel boring machines, concrete pump and on site concrete plants.

GROUP 3: Oilers on cranes.

GROUP 4: Oiler on crawler backhoe.

GROUP 5: Bulldozer, bobcats, skid steer loader, tractor, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile-powered sweeper (3-yd. capacity), 8-ft. sweeper minimum 65 HP).

GROUP 6: Well-point installation crew.

GROUP 7: Utility Engineers and Signal Persons

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator and light plant, gas and electric driven pump and air compressor.

GROUP 9: Boat & tug operator.

 ENGI0057-002 11/01/2020

	Rates	Fringes
Power Equipment Operator (highway construction projects; water and sewerline projects which are incidental to highway construction projects; and bridge projects that do not span water)		
GROUP 1.....	\$ 35.70	27.70+a
GROUP 2.....	\$ 30.40	27.70+a
GROUP 3.....	\$ 24.40	27.70+a
GROUP 4.....	\$ 30.98	27.70+a
GROUP 5.....	\$ 34.68	27.70+a
GROUP 6.....	\$ 34.30	27.70+a
GROUP 7.....	\$ 29.95	27.70+a
GROUP 8.....	\$ 31.33	27.70+a
GROUP 9.....	\$ 33.28	27.70+a

a. FOOTNOTE: a. Any employee who works three days in the week in which a holiday falls shall be paid for the holiday.

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Digging machine, crane, piledriver, lighter, locomotive, derrick, hoist, boom truck, John Henry's, directional drilling machine, cold planer, reclaimer, paver, spreader, grader, front end loader (3 yds. and over), vacuum truck, test boring machine operator, veemere saw, water blaster, hydro-demolition robot, forklift, economobile, Ross Carrier, concrete pump operator and boats

GROUP 2: Well point installation crew

GROUP 3: Utility engineers and signal persons

GROUP 4: Oiler on cranes

GROUP 5: Combination loader backhoe, front end loader (less than 3 yds.), forklift, bulldozers & scrapers and boats

GROUP 6: Roller, skid steer loaders, street sweeper

GROUP 7: Gas and electric drive heater, concrete mixer, light plant, welding machine, pump & compressor

GROUP 8: Stone crusher

GROUP 9: Mechanic & welder

ENGI0057-003 12/01/2020

BUILDING CONSTRUCTION

	Rates	Fringes
Power Equipment Operator		
GROUP 1.....	\$ 41.82	27.70+a
GROUP 2.....	\$ 39.82	27.70+a
GROUP 3.....	\$ 39.60	27.70+a
GROUP 4.....	\$ 35.60	27.70+a
GROUP 5.....	\$ 32.75	27.70+a
GROUP 6.....	\$ 38.90	27.70+a
GROUP 7.....	\$ 38.47	27.70+a
GROUP 8.....	\$ 35.79	27.70+a

a. BOOM LENGTHS, INCLUDING JIBS:

- 150 ft. and over: + \$ 2.00
- 180 ft. and over: + \$ 3.00
- 210 ft. and over: + \$ 4.00
- 240 ft. and over: + \$ 5.00
- 270 ft. and over: + \$ 7.00
- 300 ft. and over: + \$ 8.00
- 350 ft. and over: + \$ 9.00
- 400 ft. and over: + \$10.00

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

a. FOOTNOTE: Hazmat work: \$2.00 per hour additional.
Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks.

GROUP 2: Digging machine, Ross carrier, locomotive, hoist,

elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, front end loader (3 yds. and over), vibratory hammer and vacuum truck

GROUP 3: Telehandler equipment, forklift, concrete pump & on-site concrete plant

GROUP 4: Fireman & oiler on cranes

GROUP 5: Oiler on crawler backhoe

GROUP 6: Bulldozer, skid steer loaders, bobcats, tractor, grader, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile powered sweeper (3 yds. capacity), 8-ft. sweeper (minimum 65 hp)

GROUP 7: Well point installation crew

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator for light plant, gas and electric driven pump & air compressor

 * IRON0037-001 03/16/2021

	Rates	Fringes
IRONWORKER.....	\$ 37.87	30.13

LABO0271-001 05/30/2021

BUILDING CONSTRUCTION

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 33.55	26.15
GROUP 2.....	\$ 33.80	26.15
GROUP 3.....	\$ 34.30	26.15
GROUP 4.....	\$ 34.55	26.15
GROUP 5.....	\$ 35.55	26.15

LABORERS CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Mason Tender, Cement Finisher Tender, Scaffold Erector, Wrecking Laborer, Asbestos Removal [Non-Mechanical Systems]

GROUP 2: Asphalt Raker, Adzemen, Pipe Trench Bracer, Demolition Burner, Chain Saw Operator, Fence & Guard Rail Erector, Setter of Metal Forms for Roadways, Mortar Mixer, Pipelayer, Riprap & Dry Stonewall Builder, Highway Stone Spreader, Pneumatic Tool Operator, Wagon Drill Operator, Tree Trimmer, Barco-Type Jumping Tamper, Mechanical Grinder Operator

GROUP 3: Pre-Cast Floor & Roof Plank Erectors

GROUP 4: Air Track Operator, Hydraulic & Similar Self-Powered Drill, Block Paver, Rammer, Curb Setter, Powderman & Blaster

GROUP 5: Toxic Waste Remover

LABO0271-002 05/30/2021

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
LABORER		
COMPRESSED AIR		
Group 1.....	\$ 53.45	24.15
Group 2.....	\$ 50.98	24.15
Group 3.....	\$ 40.50	24.15
FREE AIR		
Group 1.	\$ 44.05	24.15
Group 2.	\$ 43.05	24.15
Group 3.	\$ 40.50	24.15
LABORER		
Group 1.....	\$ 33.55	24.15
Group 2.	\$ 33.80	24.15
Group 3.	\$ 34.55	24.15
Group 4.	\$ 27.05	24.15
Group 5.	\$ 35.55	24.15
OPEN AIR CAISSON, UNDERPINNING WORK AND BORING CREW		
Bottom Man.	\$ 39.55	24.15
Top Man & Laborer.	\$ 38.60	24.15
TEST BORING		
Driller.....	\$ 40.00	24.15
Laborer.	\$ 38.60	24.15

LABORER CLASSIFICATIONS

GROUP 1: Laborer; Carpenter tender; Cement finisher tender; Wrecking laborer; Asbestos removers [non-mechanical systems]; Plant laborer; Driller in quarries

GROUP 2: Adze person; Asphalt raker; Barcotype jumping tamper; Chain saw operators; Concrete and power buggy operator; Concrete saw operator; Demolition burner; Fence and guard rail erector; Highway stone spreader; Laser beam operator; Mechanical grinder operator; Mason tender; Mortar mixer; Pneumatic tool operator; Riprap and dry stonewall builder; Scaffold erector; Setter of metal forms for roadways; Wagon drill operator; Wood chipper operator; Pipelayer; Pipe trench bracer

GROUP 3: Air track drill operator; Hydraulic and similar powered drills; Brick paver; Block paver; Rammer and curb setter; Powder person and blaster

GROUP 4: Flagger & signaler

GROUP 5: Toxic waste remover

LABORER - COMPRESSED AIR CLASSIFICATIONS

GROUP 1: Mucking machine operator, tunnel laborer, brake person, track person, miner, grout person, lock tender, gauge tender, miner: motor person & all others in compressed air

GROUP 2: Change house attendant, powder watchperson, top person on iron

GROUP 3: Hazardous waste work within the ""HOT"" zone

LABORER - FREE AIR CLASSIFICATIONS

GROUP 1: Grout person - pumps, brake person, track person, form mover & stripper (wood & steel), shaft laborer, laborer topside, outside motor person, miner, conveyor operator, miner welder, heading motor person, erecting operator, mucking machine operator, nozzle person, rod person, safety miner, shaft & tunnel, steel & rod person, mole nipper, concrete worker, form erector (wood, steel and all accessories), cement finisher (this type of work only), top signal person, bottom person (when heading is 50' from shaft), burner, shield operator and TBM operator

GROUP 2: Change house attendant, powder watchperson

GROUP 3: Hazardous waste work within the ""HOT"" zone

* PAIN0011-005 06/01/2021

	Rates	Fringes
PAINTER		
Brush and Roller.	\$ 36.42	22.90
Epoxy, Tanks, Towers, Swing Stage & Structural Steel.	\$ 38.42	22.90
Spray, Sand & Water Blasting.	\$ 39.42	22.90
Taper.	\$ 37.17	22.90
Wall Coverer.	\$ 36.92	22.90

* PAIN0011-006 06/01/2021

	Rates	Fringes
GLAZIER.....	\$ 39.98	22.90

FOOTNOTES:

SWING STAGE: \$1.00 per hour additional.

PAID HOLIDAYS: Labor Day & Christmas Day.

* PAIN0011-011 06/01/2021

	Rates	Fringes
Painter (Bridge Work).....	\$ 54.00	22.90

PAIN0035-008 06/01/2011

	Rates	Fringes
Sign Painter.....	\$ 24.79	13.72

PLAS0040-001 06/03/2019

BUILDING CONSTRUCTION

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 36.00	27.15

FOOTNOTE: Cement Mason: Work on free swinging scaffolds under
3 planks width and which is 20 or more feet above ground
and any offset structure: \$.30 per hour additional.

PLAS0040-002 07/01/2019

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 32.85	22.20

PLAS0040-003 07/01/2019

	Rates	Fringes
PLASTERER.....	\$ 37.55	27.50

PLUM0051-002 08/31/2020

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 44.69	31.20

ROOF0033-004 06/01/2021

	Rates	Fringes
ROOFER.....	\$ 39.40	29.06

SFRI0669-001 04/01/2021

	Rates	Fringes
SPRINKLER FITTER.....	\$ 47.55	26.60

SHEE0017-002 12/01/2020

	Rates	Fringes
Sheet Metal Worker.....	\$ 38.58	36.73

TEAM0251-001 05/01/2019

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
TRUCK DRIVER		
GROUP 1	\$ 27.96	26.8525+A+B+C
GROUP 2	\$ 27.61	26.8525+A+B+C
GROUP 3	\$ 27.66	26.8525+A+B+C
GROUP 4	\$ 27.71	26.8525+A+B+C
GROUP 5	\$ 27.81	26.8525+A+B+C
GROUP 6	\$ 28.21	26.8525+A+B+C
GROUP 7	\$ 28.41	26.8525+A+B+C
GROUP 8	\$ 27.91	26.8525+A+B+C
GROUP 9	\$ 28.16	26.8525+A+B+C
GROUP 10.....	\$ 27.96	26.8525+A+B+C

FOOTNOTES:

A. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, plus Presidents' Day, Columbus Day, Veteran's Day & V-J Day, providing the employee has worked at least one day in the calendar week in which the holiday falls.

B. Employee who has been on the payroll for 1 year or more but less than 5 years and has worked 150 Days during the last year of employment shall receive 1 week's paid vacation; 5 to 10 years - 2 weeks' paid vacation; 10 or more years - 3 week's paid vacation.

C. Employees on the seniority list shall be paid a one hundred dollar (\$100.00) bonus for every four hundred (400) hours worked, up to a maximum of five hundred dollars (\$500.00)

All drivers working on a defined hazard material job site shall be paid a premium of \$2.00 per hour over applicable rate.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Pick-up trucks, station wagons, & panel trucks

GROUP 2: Two-axle on low beds

GROUP 3: Two-axle dump truck

GROUP 4: Three-axle dump truck

GROUP 5: Four- and five-axle equipment

GROUP 6: Low-bed or boom trailer.

GROUP 7: Trailers when used on a double hook up (pulling 2 trailers)

GROUP 8: Special earth-moving equipment, under 35 tons

GROUP 9: Special earth-moving equipment, 35 tons or over

GROUP 10: Tractor trailer

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

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END OF GENERAL DECISION"

CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

APPENDIX E

Performance & Pay Bonds

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CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

LETTER OF INTENT FORM

To: City of Central Falls
Office of the Purchasing Agent
City Hall
580 Broad Street
Central Falls, RI, 02863

Re: Jenks Park Improvements Phase I

To Whom It May Concern:

This is to advise that the _____
(Legal Name of Surety)

_____ who is approved by you and authorized to do business in the State of Rhode Island, is prepared to execute a Performance Bond and a Labor and Material Payment Bond, each in the amount of one hundred percent (100%) of the total bid for _____
(Legal Name of Contractor)

_____ should they be awarded the contract for _____

_____, Central Falls, Rhode Island

Name of Surety

By _____
Signature of Authorized Surety Officer

Print name & Title of Surety Officer

Date _____

Complete this form and enclose with the Bid Security in the separate envelope provided specifically for that purpose.

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CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE I
CONTRACT NO. 2022-0007**

APPENDIX F

General Provisions

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1. DISCLAIMER

The contract will be for the services described herein or as dictated in solicitations for work. However, this agreement should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these services from any other vendor.

2. BUY AMERICA

The Contractor agrees to comply with 23 CFR 635.410 which provides that Federal funds may not be obligated unless all steel, iron and manufactured products used in FHWA funded projects are produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver.

3. COORDINATION WITH OTHER CONTRACTS

It shall be the Contractor's responsibility to coordinate, cooperate and schedule its work and all segments thereof with the Engineer, other contractors, utility owners and applicable local authorities.

4. GUARANTEE OF WORK

The Contractor shall guarantee his work for a period of two years after the project is completed. The guarantee shall be incidental to the work with no additional compensation paid. The City shall be the sole judge as to whether work shall be corrected, including pipe repair, backfilling, and restoration.

5. ALL WORK SUBJECT TO CONTROL OF THE CITY

In performing the work, the Contractor shall abide by all orders, directions, and requirements to perform all work to the satisfaction of the City and its engineers. The City shall determine the amount, quality, and acceptability of all parts of the work.

All materials and workmanship shall be subject to random inspection, examination, or testing by the City and the Engineer at any and all times during construction and at any and all places where such construction is carried on. The City shall reserve the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the project area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the City may by contract or otherwise have the defects remedied or rejected materials removed from the project area and charge the cost of the same against any monies which may be due the Contractor, without prejudice to any other rights or remedies of the City.

Payment will be made only for materials and work that are in place and accepted by the City.

Materials testing services will be paid for and coordinated by the City or its agent. In the event that non-compliant materials or defective workmanship needs to be replaced, the Contractor shall compensate the City for further materials testing, or the City shall withhold payment in the amount of the additional materials testing services.

6. BID PRICES

All bid prices shall remain firm for the contract duration and any contract extension. The prices shall include the provision for all tools, materials, equipment, labor, transportation, mobilization, traffic control, licenses, permits and all other incidentals necessary to complete the work.

Measurement and payment of items are as indicated in the attached specifications. If not stated in the attached specifications, the Rhode Island Department of Transportation Standard Specifications for Road and Bridge Design (with all revisions and addenda) shall dictate.

7. TRAFFIC CONTROL AND TRAFFIC ENGINEERING PERMITS

The Contractor shall prepare all necessary applications and traffic control plans as required by the City Traffic Engineer to ensure safe and efficient passage of motorists, bicyclists and pedestrians, all in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). Permits to occupy the street/sidewalk, close/detour traffic or post no parking signs must be obtained from the Traffic Engineering Department prior to commencing work. Fees will be assessed to the Contractor. The Contractor shall submit for reimbursement of the fees, with no markups permitted.

The Contractor shall also prepare all necessary applications and traffic control plans as required when working on State owned/maintained roads by the Rhode Island Department of Transportation (RIDOT). Any fees associated with RIDOT permits shall be paid by the Contractor and reimbursed by the City, with no markups permitted.

Prior to commencing any work, the Contractor shall erect all signs, barricades and other devices to secure the site and create a safe working environment, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and approved traffic control plans. Operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutters and traffic. Convenient access to driveways, houses and building along the line of the work shall be maintained whenever possible.

The Contractor shall clean up the work area at the end of each work day. The Contractor shall not stockpile any material in the Public Right-of-Way (ROW) without permission from the CITY.

Portable restrooms are not permitted to be placed in the Public ROW. Contractors are permitted to tow portable restrooms to the site each day but must be towed off site. Portable restrooms shall be located as far away from residences and businesses as possible.

8. TIME OF WORK

Work shall be performed during normal business hours, Monday through Friday, 7:00 AM-5:00PM. Some jobs may require the Contractor to work outside normal business hours. In this event, work conditions will be made clear to the Contractor prior to awarding the work. Also, the Contractor may request to work on Saturdays and Sunday or outside of normal business hours, only with approval from the City.

9. COORDINATION WITH ABUTTERS

The Contractor shall provide notice to abutters at least 24 hours before sidewalk or driveway work will be performed. When installing cement concrete driveways, the Contractor shall provide at least 48 hours notice that the driveway will be inaccessible while grading, forming, pouring and curing. The notices shall state the Contractor's name, include a statement that the Contractor is working for the City of Central Falls, a contact name and phone number for the contractor and the date and time that the driveway will be accessible. The Contractor shall remove all warning tape and stakes when the driveway is accessible. The Contractor shall also coordinate with the City's Parking Administrator when residents are displaced during a driveway pour. The Parking Administrator will coordinate with the Central Falls Police Department to allow for overnight street parking.

10. COORDINATION WITH UTILITIES

The Contractor shall arrange and cooperate with the various utilities or other parties interested when necessary, as directed by the Engineer. The Contractor will be responsible for any damage done to any utility poles or lines, curbing, basins, hydrants, water and sewer lines, conduits and other accessories and appurtenances. The cost for coordination shall be incidental to the work.

11. DIGSAFE

It is the Contractor's responsibility to notify and coordinate with DigSafe before commencing any excavation operations. The contractor shall contact all utility companies in addition to contacting dig safe at 811 or 888-dig-safe (888-344-7233) at least 72 business hours (3 business days) prior to any excavation as defined by RI state law 39-1.2-1. This does not include weekends and legal holidays. Once notified, dig safe will contact member utilities to come to the site and mark underground utility wires, cables and pipelines. Dig safe member utility companies are responsible to mark only the facilities that they own or maintain. non dig safe member companies are not notified by dig safe. non-member utilities may not be owned or maintained by member utility companies; therefore, they are unable to locate them. it is the contractor's responsibility to investigate if any privately owned or non-dig safe member utilities are in the area.

12. POLICE DETAILS

The Contractor shall consult with the City or its agent prior to ordering police details. After police details are approved, the Contractor shall order the police details, obtain the police detail slip and provide the slips to the City. The City will pay the police details directly. If working at multiple sites, the Contractor shall indicate the hours spent by police details at each site to the nearest quarter hour.

13. PAYMENT

Prior to work commencing, the City will indicate how projects or portions of projects should be invoiced. To aid in prompt payment to the Contractor, a project may be authorized using multiple funding accounts and may require invoices to be submitted by funding account.

Payment shall be submitted when an assigned job is fully complete and accepted by the City. The pay application shall include certified payrolls, and as-built drawings as necessary.

The City reserves the right to withhold all payment for damage caused to adjacent properties (private or public) caused by the Contractor's actions, until the damage has been resolved.

The Contractor may apply for partial payments for projects exceeding \$25,000, with 5% of the invoice total held in retainage. Retainage may be released when the project is fully complete and accepted by the City. Otherwise, the Contractor may submit pay requests in full, only after the City has approved all work completion.

The City, prior to making each payment may require the Contractor to furnish releases or receipts from any or all persons/firms performing work and supplying material or services to the Contractor or any subcontractor.

The City will make every effort to process payment within 60 days of an approved invoice.

All work will be completed in a workmanlike manner, subject to inspection and approval by the City. No bid shall include elements beyond the scope of work identified.

The Contractor is solely responsible for creating a safe environment for all personnel at the worksite, including but not limited to personnel protection equipment and adequate traffic control.

The Contractor will be required to cooperate and arrange the sequence of work in conjunction with utilities and property tenants.

LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:

Successful Bidder upon his failure or refusal to execute and deliver the contract and bonds required within three (3) days after they receive note of the acceptance of their bid, shall forfeit to the City, as liquidated damages for such failure or refusal, the surety deposited with his bond.

TIME COMPLETION AND DAMAGES:

It is hereby understood and mutually agreed, by and between the bidder and the City that the work will begin on a date mutually acceptable to the City and the Bidder. The Bidder agrees that said work shall be prosecuted regularly, diligently, and uninterrupted. It is expressly understood and agreed, by and between the Contractor/Bidder and the City, that the time for the completion of the work described herein in the Bid Form is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract.

Failure to perform within the time limit specified in the Offering; Appendix B: General Conditions section of these Specifications will result in liquidated damages of **\$1,000.00 per day** (Sunday and legal holidays excluded). The Bidder should be made aware that he will be held totally responsible for such additional costs and should be prepared to take any and all measures to complete the job within the time frame listed. The Contractor agrees to the time of completion as scheduled.

WARRANTY:

The Contractor shall guarantee all work and materials for a period of **one year** against any defects in material or workmanship after final completion and acceptance by the City. The cost of all labor, material, shipping charges and other expenses in conjunction with defective work within this period shall be borne by the Contractor.

PROTECTION OF WORK:

The Contractor shall be responsible for proper protection of his work and materials from injury or loss. All material left on site during the progress of the work shall be secured at all times. Any damages to the existing facilities or property within the project limits as a result of the Contractor's operations shall be the responsibility of the Contractor to repair or replace at no cost to the City.

WORK BEYOND SCOPE OF THIS PROJECT:

The Contractor shall not engage or contract with any third parties within or adjacent to this project where common

resources, material or equipment may be used. The City shall reserve the right to reduce or withhold payment for materials, equipment and or resources for work completed beyond the scope or limits of this project.

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CITY OF CENTRAL FALLS

**JENKS PARK IMPROVEMENTS PHASE 1
CONTRACT NO. 2022-0007**

APPENDIX G

Job Specific Specifications

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