

2004 Specifications

SPECIAL PROVISION

000---003

Notice to All Bidders

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

2004 Specifications

SPECIAL PROVISION

000---004

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

- 1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.
- 2. **Goals.**
 - a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
 - b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (percent)	Goals for female participation in each trade (percent)
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See Table 1

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1

County	Goals for Minority Participation	County	Goals for Minority Participation
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

2004 Specifications

SPECIAL PROVISION**000---006****Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

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

obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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

- applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both

minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

2004 Specifications

SPECIAL PROVISION**000---009****Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

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

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

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

2004 Specifications

SPECIAL PROVISION**000---011****Department Division Mailing and Physical Addresses**

For this project, Item 000, "Department Division Mailing and Physical Addresses," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Use the information in Table 1 to contact the Department Divisions referenced in the Standard Specifications or Special Provisions and Special Specifications in the Contract. This listing is for the purposes of providing addresses for transmission of information in accordance with the specifications. Unless otherwise stated in the specifications, address all correspondence and transmission of information to the Engineer responsible for the oversight of construction. Submit bidding documents to the location shown in the official advertisement. Address changes will be posted on the Department's Internet site at <http://www.txdot.gov/>.

Table 1
Department Division Mailing and Physical Addresses

Division/Section Name	U.S. Post Office Address	Physical Address
Bridge Division	Texas Department of Transportation Bridge Division 125 E 11 th Street Austin TX 78701-2483	Bridge Division Fabrication Branch 118 E. Riverside Dr. Austin, Texas 78704 (512) 416-2187
Construction Division Construction Section	Texas Department of Transportation Construction Division Construction Section 125 E. 11 th St. Austin TX 78701-2483	Construction Division 200 E. Riverside Dr. Austin, TX 78704 (512) 416-2500
Materials & Pavements Section	Texas Department of Transportation Construction Division Materials & Pavements Section 125 E 11 th Street Austin TX 78701-2483	Construction Division Materials & Pavements Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5800

Division/Section Name	U.S. Post Office Address	Physical Address
Maintenance Division Maintenance Section	Texas Department of Transportation Maintenance Division Maintenance Section 125 E 11 th Street Austin, TX 78701	Maintenance Division Maintenance Section 150 East Riverside Drive Austin, TX 78704 (512) 416-3185
Vegetation Management Section	Texas Department of Transportation Maintenance Division Vegetation Management Section 125 E 11 th Street Austin, TX 78701	Maintenance Division Vegetation Management Section 150 East Riverside Drive Austin, TX 78704 (512) 416-3093
Traffic Operations Division Traffic Operations Division	Texas Department of Transportation Traffic Operations Division 125 E 11 th Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division 200 E. Riverside Bldg. 118 Austin, Texas 78704 512-416-3200
Traffic Engineering	Texas Department of Transportation Traffic Operations Division Traffic Engineering Section 125 E 11 th Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Engineering Section 200 E. Riverside Bldg. 118 Austin, Texas 78704 (512) 416-3118
Traffic Management-ITS Branch	Texas Department of Transportation Traffic Operations Division Traffic Management Section 125 E 11 th Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Management Section Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5100
Traffic Management- Signal/Radio Branch	Texas Department of Transportation Traffic Operations Division Traffic Management Section- Signal/Radio Branch 125 E 11 th Street Austin TX 78701	Texas Department of Transportation Traffic Operations Division Traffic Management Section- Signal/Radio Branch Cedar Park Campus, Bldg. 51 9500 Lake Creek Parkway Austin, TX 78717 512-506-5100

2004 Specifications

Federal-Aid Projects Only

SPECIAL PROVISION

000--1483

**Notice of Changes to
U.S. Department of Labor Required Payroll Information**

Do not include employee addresses and social security numbers on the payroll submissions to the department. In lieu of the social security number, include an individually identifying number for each employee (Example: last four digits of the individual's social security number).

Maintain the full social security number and current address of each covered employee in files for 3 years after project completion and make the information available upon the Department's request.

Form FHWA 1273 and optional form WH-347 will be revised in the future to reflect these changes.

2004 Specifications

SPECIAL PROVISION**000--1966****Disadvantaged Business Enterprise in Federal Aid Contracts**

1. **Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal Aid Contracts", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

A. Article A. Disadvantaged Business Enterprise in Federal Aid Contracts.

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:
 - a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.
 - b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
 - c. The requirements of this Special Provision shall be physically included in any subcontract.
 - d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days,

excluding national holidays, from receipt of the information outlined in this Special Provision under Section 1.A.3, "Contractor's Responsibilities." If the requirements of Section 1.A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

2. Definitions.

- a. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.
- b. "Disadvantaged Business Enterprise" or "DBE" is defined in the standard specifications, Article 1, Definition of Terms.
- c. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they 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.
- d. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- e. "Federal Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.
- f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."
- h. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- i. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- j. "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

- k. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

3. Contractor's Responsibilities. These requirements must be satisfied by the Contractor.

- a. After conditional award of the contract, the Contractor shall submit a completed Form SMS.4901 "DBE Commitment Agreement", Form SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.
- b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

- If the Program Manager of the OCR determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the OCR.
- d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.
- e. The preceding information shall be submitted directly to the Office of Civil Rights, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.
- f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a, of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.
- g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form 4901 "DBE Commitment Agreement", Form SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.
- h. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

- a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.
- b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucp/default.htm>.

- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
 - d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.
5. **Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:
- a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. 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 subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
 - b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.
 - (1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

In all cases, prime or other non-DBE subcontractor assistance will not be credited toward the DBE goal.

- (2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF

- (3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.
- (a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.
 - (b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 - (c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement
 - (d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.
- (4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.
- (5) Project materials or supplies acquired from an affiliate of the prime contractor can not directly or indirectly (2nd or lower tier subcontractor) be used for DBE goal credit.

- c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.
(Definition of a DBE manufacturer found at 1A.c.(1) of this provision.)

For purposes of this Section (1.A.c.(1)), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- (2) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

- (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

- (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, 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 or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

- (4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.
- f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

6. Records and Reports.

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form SMS.4903, "DBE Progress Report," is to be used for monthly reporting. Form SMS.4904, "DBE Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project.

The original final report must be submitted to the OCR and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

- b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.
 - c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.
 - d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c of this Special Provision, must be submitted with the "DBE Final Report."
 - e. Provide a certification of prompt payment in accordance with the Department's prompt payment procedure to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.
7. **Compliance of Contractor.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

When a DBE subcontractor named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required 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.

A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

Forward Form 2371, "DBE Trucking Credit Worksheet," completed by the DBE trucker every month DBE credit is used.

- B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

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

2004 Specifications

SPECIAL PROVISION

000--2329

Partnering

1. General. It is the intent of this provision to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Department and the Contractor.

2. Definitions.

A. Informal Partnering. Partnering that does not make use of a facilitator.

B. Formal Partnering. Partnering where the services of a facilitator (internal or external) are utilized.

3. Procedures for Partnering Meetings and Format. Informal Partnering is required for this project, unless Formal Partnering is mutually agreed to in lieu of the Informal Partnering.

Facilitators. The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.

(1) **Internal Facilitators.** A Department or Contractor internal (staff) facilitator may be selected as the facilitator at no additional cost to either party.

(2) **External Facilitators.** A private firm or individual that is independent of the Contractor and the Department may be selected as the facilitator. Submit the facilitator's name and estimated fees for approval prior to contracting with the facilitator.

Meetings and Arrangements. Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances including but not limited to audio/visual equipment. Make all meeting arrangements for Formal Partnering. Use Department facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval prior to finalizing arrangements.

Coordinate facilitator discussions prior to the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical contractor, subcontractor, and supplier staff in the list. Provide the facilitator the list of attendees and invite the attendees listed.

The Department will invite and provide a list of attendees that includes but is not limited to Department, City, County, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed.

4. Payment. Expenses for employee time, contractor equipment, or overhead will not be allowed. Markups will not be allowed.

Informal Partnering will be conducted with each party responsible for their own costs.

For Formal Partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by its internal facilitator, including but not limited to meals, travel, and lodging. Department facilitators may be used at no additional cost.

For Formal Partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Department but used at the Contractor's option, the Contractor will be responsible for all costs of the external facilitator.

For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved.

2004 Specifications

SPECIAL PROVISION

000--2332

Schedule of Liquidated Damages

For Dollar Amount of Original Contract		Dollar Amount of Daily Contract Administration Liquidated Damages per Working Day
From More Than	To and Including	
0	100,000	570
100,000	500,000	590
500,000	1,000,000	610
1,000,000	1,500,000	685
1,500,000	3,000,000	785
3,000,000	5,000,000	970
5,000,000	10,000,000	1125
10,000,000	20,000,000	1285
20,000,000	Over 20,000,000	2590

2004 Specifications

SPECIAL PROVISION**000---2607****Nondiscrimination**

Description. All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

Definition of Terms. Where the term “contractor” appears in the following six nondiscrimination clauses, the term “contractor” is understood to include all parties to contracts or agreements with the Texas Department of Transportation.

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

(1) Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall 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 shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2004 Specifications

Federal-Aid Projects Only

SPECIAL PROVISION**000--2638****On-the-Job Training Program**

1. **Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
2. **Trainee Assignment.** Training assignments are based on the past volume of state-let highway construction contracts awarded with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
3. **Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter, and 90% for the last quarter, respectively.
4. **Reimbursement.** If requested, contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department. Training may occur on this project, all other Department contracts, or local-administered federal-aid projects with concurrence of the local government entity. However, reimbursement for training is not available on projects to the extent that such projects that do not contain federal funds.
5. **Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

2004 Specifications

SPECIAL PROVISION

000--2839

Important Notice to Contractors

By the 20th day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor-related incidents and injuries that involved a third party.

An “incident” is defined as any work-related occurrence that caused damage only to vehicles, equipment, materials, etc.

An “injury” is defined as an OSHA recordable injury.

Acquire an Electronic Project Records System (EPRS) account to report incidents and injuries. Submit an EPRS User Access Request Form (Form 2451) to request an account. This form can be found at <http://www.txdot.gov/business/resources/doing-business/prequalification.html>.

Report injuries and incidents using the EPRS website located at <https://apps.dot.state.tx.us/apps/eprs/InjuryIncident/InjryIncdt.aspx>.

Failure to submit this information to the Engineers by the 20th day of each month will result in the Department taking actions including, but not limited to withholding estimates and suspending the work. This report will not be paid for directly, but will be considered subsidiary to Items of the contract.

SPECIAL PROVISION

000--2859

Important Notice to Contractors

As of April 9, 2014, utilities within the project limits have not been cleared. The City anticipates clearance by the dates listed below. Unless otherwise stated, clearance of these obstructions will be performed by their owners. Estimated clearance dates are not anticipated to interfere with the Contractor's operations. In the event the clearance dates are not met, requests for additional compensation or time will be made in accordance with the standard specifications.

The Contractor is invited to review the mapped information of obstructions on file with the Engineer.

UTILITY				
Utility Owner	Utility	Approximate Location	Estimated Clearance Date	Effect on Construction
AEP	Power line (OH)	(Crossings) 11+83,16+29,16+73,24+94, 29+71,31+84,32+32 (Parallel) 27+68-29+61, Lt. (varies) 29+90-38+38 Rt. (varies)	3 months after right of way is acquired	No
AGUA	Water line (2",12")	(Crossings) (2") 11+57,24+55,27+84 (12") 24+41 (Parallel) (2") 11+57-13+47, Rt. (varies) (2") 13+47-24+55, Lt. (varies) (2") 24+55-27+84, Rt. (varies) (2") 27+84-28+08, Lt. (varies) (2") 28+08-37+83, Rt. (varies) (12") 10+36-11+57, Lt. (varies) (12") 10+00-24+47, Rt. (varies)	3 months after right of way is acquired	No
AT&T	Telephone line (U/G)	Throughout Project	3 months after right of way is acquired	No
AT&T	Fiber Optics (U/G)	(Parallel) 32+04-38+08, Rt. 16.5'	3 months after right of way is acquired	
City of Mission	Sewer line (12")	(Parallel) 24+98-38+08, Lt. 13.6'	3 months after right of way is acquired	No

It will be the responsibility of the Contractor to prosecute the work in such a manner and sequence that there will be no interference with the work of others in adjusting utilities. The Contractor shall allow free ingress to and egress from these areas over the Right of Way to these workers.

As of April 9, 2014, right of way within the project limits has not been cleared. The City anticipates clearance by the dates listed below. Unless otherwise stated, clearance of these obstructions will be performed by their owners. Estimated clearance dates are not anticipated to interfere with the Contractor's operations. In the event the clearance dates are not met, requests for additional compensation or time will be made in accordance with the standard specifications.

The Contractor is invited to review the mapped information of obstructions on file with the Engineer.

RIGHT-OF-WAY ACQUISITION			
Parcel Number	Owner	Estimated Acquisition Date	Affect on Construction
1	HCID #6	2/2015	y
2	Antonio Uresti	2/2015	y
3	Eleazar Villarreal	2/2015	y
4	HCID #6	2/2015	y
5	Felix Chavez Jr.	2/2015	y
6	Felix Chavez Jr.	2/2015	y
7	Eric Lee & Chelsey Posada	2/2015	y
8	Leticia Sanchez	2/2015	y
9	Luis Sanchez	2/2015	y
10	HCID #6	2/2015	y
11	Kile Reinhardt	2/2015	y

2004 Specifications

CCSJ: 0921-02-323

SPECIAL PROVISION

001---007

Definition of Terms

Any reference to the Department, TxDOT or the Texas Department of Transportation shall be replaced by Hidalgo County.

001---007
01-08

2004 Specifications

SPECIAL PROVISION

001---015

Definition of Terms

For this project, Item 001, "Definition of Terms," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

The following Articles are voided and replaced by the following:

1.50. Disadvantaged Business Enterprise (DBE). A small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.

1.128. Subcontractor. A Subcontractor is defined as an individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly owned subsidiary, or specialty-type businesses such as security companies and rental companies.

The following Articles are voided and not replaced.

1.97. Proposal.

1.98. Proposal Form.

1.99. Proposal Guaranty.

This Item is supplemented by the following:

1.148. Additive Alternate. A bid item contained in a proposal that is not a regular item or a designated alternate bid item. The additive alternate item(s) include work that may be added to the base bid work.

1.149. Base Bid. The total bid (includes regular bid items or corresponding alternate bid items if lower) amount without additive alternates.

1.150. Affiliates. Two or more firms are affiliated if:

- they share common officers, directors, or stockholders;

- a family member of an officer, director, or stockholder of one firm serves in a similar capacity in another of the firms;
- an individual who has an interest in, or controls a part of, one firm either directly or indirectly also has an interest in, or controls a part of, another of the firms;
- the firms are so closely connected or associated that one of the firms, either directly or indirectly, controls or has the power to control another firm;
- one firm controls or has the power to control another of the firms; or,
- the firms are closely allied through an established course of dealings, including but not limited to the lending of financial assistance.

1.151. Bid. The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

1.152. Bid Guaranty. The security furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded.

1.153. Electronic Bid Form. The bid form contained in the Department's Electronic Bidding System.

1.154. Electronic Bidding System (EBS). The Department's automated system that allows bidders to enter and submit their bid information electronically.

1.155. Electronic Vault. The secure location where electronic bids are stored prior to bid opening.

1.156. Family Member. A family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.

1.157. Printed Bid Form. The bidding form printed and sent to the bidder by the department or printed by the bidder from the department's Electronic Bidding System.

1.158. Bid Form. The form provided by the Department used by the bidder to submit a bid. The bid form is a Department mailed bidder's form (traditional proposal submitted manually), a Department EBS printed bid form (submitted manually), or the bid form submitted electronically through the Department's EBS.

2004 Specifications

SPECIAL PROVISION

002---017

Instructions to Bidders

For this project, Item 002, "Instruction to Bidders," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Except for Article 2.1 the remainder of Item 2 is voided and replaced by the following:

2.2. Eligibility of Bidders. Submit for approval a Confidential Questionnaire Form and an audited financial statement or a Bidder's Questionnaire Form at least 10 days before the date that bids are to be opened. Once approved, the eligibility is valid for a period of one year. Bidders prequalified with a Bidder's Questionnaire Form are not eligible to bid on a project that requires the Confidential Questionnaire Form and audited financial statements. Comply with all technical prequalification requirements in the bid form. Obtain prequalification forms from the Construction Division.

2.3. Issuing Bid Forms. The Department will issue a bid form to a prequalified Bidder meeting the requirements of the bid form on request if the estimated cost of the proposed Contract is within that Bidder's available bidding capacity. Request bid forms orally, in writing, or electronically.

In the case of a joint venture, all joint venture participants must be prequalified. An equally divided portion of the Engineer's estimate must be within each participant's available bidding capacity.

The Department will not issue a bid form for a proposed Contract if one or more of the following apply:

- the Bidder is disqualified by an agency of the federal government.
- the Bidder is suspended or debarred by the Commission, or is prohibited from rebidding a specific proposal because of bid error or failure to enter into a Contract of the first awarded bid.
- the Bidder has not fulfilled the requirements for prequalification.
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Department to participate in the preparation of the plans or specifications on which the bid or Contract is based.
- the Bidder did not attend an advertised mandatory pre-bid conference.

2.4. Interpreting Estimated Quantities. The quantities listed in the bid form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in accordance with the Contract.

2.5. Examining Documents and Work Locations. Examine the bid form, plans, specifications, and specified work locations before submitting a bid for the work contemplated. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for use of the Department in the preparation of plans. This information is provided for the Bidder's information only and the Department makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for contractor-proposed changes in the Items of work, specifications, plans or bid forms given during the bidding process are not binding. Only requirements included in the bid form, associated specifications, plans and Department-issued addenda are binding. Request explanations of documents in adequate time to allow the Department to reply before the bid opening date..

Immediately notify the Department of any error, omission, or ambiguity discovered in any part of the bid form, specifications or plans. The Department will issue an addendum when appropriate.

2.6. Preparing the Bid. Prepare the bid on the form furnished by the Department. Bid forms may be printed or electronic. Informational forms will not be accepted.

Specify a unit price in dollars and cents for each Item for which an estimated quantity is given. When "Working Days" is an Item, submit the number of working days to be used to complete the Contract, or phases of the Contract shown on the plans.

An Item left blank will constitute an incomplete bid and will be handled as prescribed in Article 2.14, "Tabulating Bids." Include unit bid prices for each Item in the Item group or alternate Item group, except for instances when alternate Items pertain to foreign steel or iron materials.

If a bid form contains both regular bid Items for domestic and alternate bid Items pertaining to foreign steel or iron materials the bidder must either:

- submit unit bid prices for domestic bid items only, or
- submit unit bid prices for both the alternate foreign bid items and domestic bid items.

Verify whether addenda have been issued on a proposed Contract. Acknowledge all addenda.

A. Printed Bid Forms. Make all entries and execute the bid form in ink. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. The bid form must be signed by person(s) authorized to bind the Bidder(s).

As an alternative to hand writing the unit prices in the bid form, submit a computer printout signed by the person authorized to bind the Bidder or for a joint venture the persons authorized to bind the Bidders. As a minimum, computer printouts must contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" form in the bid form.

As an additional alternative, the bidder may prepare the bid using EBS and print out the bid form. Execute the bid form. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. The bid form must be signed by persons authorized to bind the Bidders.

B. Electronic Bid Forms. Use the electronic bid form in EBS. Acknowledge an addendum by initialing each addendum listed under the addenda tab in EBS. Digitally sign the bid form using a digital certificate issued by the department. In the case of a joint venture, the person signing the bid form must be authorized to bind all joint venture participants.

2.7. Nonresponsive Bids. A bid that has one or more of the deficiencies listed below is nonresponsive and will not be considered.

A. The person or, in the case of a manually submitted joint venture bid, persons did not sign the bid form.

B. The proposal guaranty did not comply with the requirements contained in Article 2.8, "Bid Guaranty."

C. The bid was in a form other than the official bid form issued to the Bidder or Bidders.

D. The bid was not in the hands of the letting official at the time and location specified in the advertisement. For electronic bids, "in the hands of the letting official" means EBS vault acknowledgement.

E. The bid form submitted had the incorrect number of Items.

F. A computer printout, when used, was not signed in the name of the Bidder (or joint Bidders, in the case of a joint venture), or omitted required Items or included an Item or Items not shown in the bid form.

G. The Bidder was not authorized to receive a bid form under Article 2.3, "Issuing Bid Forms."

H. The Bidder failed to acknowledge receipt of all addenda issued.

I. The Bidder bid more than the maximum or less than the minimum number of allowable working days shown on the plans when working days was an Item.

J. The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid form.

K. The Bidder did not attend a specified mandatory pre-bid conference.

The department will not accept or read any of the bids submitted on the same project by:

- a joint venture and one or more of its partners, or

- affiliated bidders.

2.8. Bid Guaranty. The bid guaranty amount is fixed at the amount indicated on the bid form on the date the bid form is released to the public. Provide a bid guaranty in the amount indicated on the bid form as follows:

- For printed bids, use either a guaranty check or a bid bond. An electronic bid bond may be used as the guaranty for a bid form printed from EBS. (The bid bond number is printed on the form printed from EBS and the Department verifies the bond through EBS at the letting.)
- For electronic bids, use an electronic bid bond. Do not use guaranty checks or printed bid bonds on electronic bids.

A. Guaranty Check. The guaranty check must be payable to the Texas Transportation Commission and must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, a savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The check must be dated on or before the date of the bid opening. Post dated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; be drawn by a bank and on a bank; or be payable at or through a bank. The Department will not accept personal checks, certified checks, or other types of money orders as a bid guaranty.

B. Bid Bond. The bid bond must be on the form provided by the Department, with powers of attorney attached, and in the amount specified on the bid bond form. The bond form must be dated on or before the date of the bid opening, bear the impressed seal of the Surety and be signed by the Bidder or Bidders, in the case of a joint venture, and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond, completed as outlined in this Subarticle. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.

C. Electronic Bid Bond. Use the most current version of the electronic bond issued by the department. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into EBS. Use bond authorization codes issued by the companies listed in most recent version of EBS.

2.9. Submittal of Bid. Bids may be submitted either manually or electronically.

A. Manually Submitted Bids.

Place the completed bid form and the bid guaranty in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the bidder's responsibility to ensure that the sealed bid arrives at the location described in the official advertisement of the project on or before the time and date set for the opening. The bid must be in the hands of the Letting Official by that time, regardless of the method chosen for delivery, in order to be accepted.

In addition to the requirements above, all pages of a bid form printed from EBS must be submitted.

B. Electronically Submitted Bids. Submit the electronic bid to the electronic vault using EBS. It is the bidder's responsibility to ensure that the bid is received by the electronic vault on or before the time and date set for the opening.

2.10. Revising Bid Forms. Revisions to bids will be handled as follows:

A. Manually Submitted Bids.

1. Before Submission. Make desired changes to the printed bid form in ink and initial the changes.

2. After Submission. Withdraw the bid in accordance with Article 2.11, "Withdrawing Bids." Make desired changes to the printed bid form in ink and initial the changes. Resubmit to the Letting Official in accordance with Article 2.9, "Delivery of Bid." The Department will not make revisions to a bid on behalf of a Bidder.

B. Electronically Submitted Bids. Make desired changes up until the time and date set for the opening of bids using EBS. The electronically submitted bid with the latest time stamp by the electronic vault will be used for tabulation purposes.

C. After Bid Opening. Revisions to bids are not allowed after the time and date set for the opening.

2.11. Withdrawing Bids.

A. Manually Submitted Bids. Submit a signed written request to the Letting Official. The Department will not accept telephone or electronic requests, but will accept a properly signed telefacsimile request. The request must be made by a person authorized to bind the Bidder, and must be in the hands of the Letting Official before the time and date set for the opening. In the case of joint venture, the department will accept a request from any person authorized to bind a party to the joint venture to withdrawal a bid.

B. Electronically Submitted Bids. Submit an electronic or written request to withdraw the bid. The electronic request must be made using EBS. For a written request, submit a signed request to the Letting Official. A request to withdraw an electronic bid must be made by a person authorized to bind the Bidder and must be made prior to the time and date set for the opening. For written request for withdrawals of electronic bids and in the case of joint venture, the department will accept a request from any person authorized to bind a party to the joint venture to withdrawal a bid.

2.12. Opening and Reading of Bids. At the time, date and location specified in the official advertisement, the Letting Official will publicly:

- open and read manually submitted bids; and
- read electronically submitted bids.

2.13. Gratuities. Do not offer Department employees benefits, gifts, or favors. The only exceptions allowed are ordinary business lunches. Failure to honor this policy may result in the termination of the Contract and sanctions under the Texas Administrative Code. Termination of the Contract will be in accordance with Article 8.7, "Termination of Contract."

2.14. Tabulating Bids.

A. Official Total Bid Amount. The Department will sum the products of the quantities and the unit prices bid in the bid form to determine the official total bid amount. Except as provided in Section 2.14.G, "Special Item Considerations," the official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

B. Consideration of Bid Format. When a Bidder submits both an electronic bid and a properly completed manual bid, the unit bid prices in the manual bid will be used to determine the total bid amount. If a bidder submits an electronic bid and an incomplete manual bid, the electronic bid will be used in the tabulation of the total bid amount.

If a bidder submits two or more manual bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

C. Rounding of Unit Prices. The Department will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent (\$0.001) in determining the amount of the bid as well as computing the amount due for payment of each Item under the Contract. For rounding purposes, entries of five-hundredths of a cent (\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

D. Interpretation of Unit Prices. The Department will make a documented determination of the unit bid price for tabulation purposes if a unit bid price is illegible. The Department's determination will be final.

E. Consideration of Unit Prices. Unit bid price entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00, will be tabulated as one-tenth of a cent (\$0.001).

The Department will consider proposals where unit bid prices have been left blank incomplete and nonresponsive. If a proposal has a regular and a corresponding alternate Item or group of Items, the bid will be considered complete if:

- the regular Item or group of regular Items has unit prices entered, or
- the alternate Item or group of alternate Items has unit prices entered.

The bid will be considered incomplete and nonresponsive if:

- a regular Item or group of regular Items is left blank, and
- a corresponding alternate Item or group of alternate Items is left blank.

F. Consideration of Alternate Items. The Department will make two calculations using one-tenth of a cent (\$0.001) for each Item if:

- a regular Item or a group of Items have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00, and
- a corresponding alternate Item or group of Items, have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of \$0.00.

The Department will select the regular Item or Items or the alternate Item or Items at the Department's discretion if both the regular and alternate bid results in the same cost to the State.

The Department will use the unit price that is greater than zero for bid tabulation if:

- a unit price greater than zero has been entered for either a regular bid or a corresponding alternate Item or group of Items, and
- an entry of no dollars and no cents, zero dollars and zero cents, or a numerical entry of \$0.00 has been entered for the other corresponding Item or group of Items.

If a unit price has been entered for both the regular Item and a corresponding alternate Item, the Department will select the option (regular or alternate) that results in the lowest cost to the State. The Department will select the regular Item or Items or the alternate Item or Items at the Department's discretion if both the regular and alternate bid results in the same cost to the State.

G. Special Item Considerations.

1. Rubber Additives. For proposed Contracts without federal funds, if an alternate Item for "Hot Asphalt-Rubber Surface Treatments" or "Hot Mix Asphalt Concrete Pavement" which contains ground tire rubber is shown in the bid form and the Bidder bids that alternate Item, the amounts bid for "Hot Asphalt-Rubber" and "Aggregate" or "Hot Mix Asphalt Concrete" will be reduced to 85% of the amounts actually bid. This reduction will only be used for the purposes of determining the lowest Bidder. To qualify, the ground tire rubber used must be produced from scrap tire ground in a facility in Texas. Payment for "Hot Asphalt-Rubber" and "Aggregate" or "Hot Mix Asphalt Concrete" will be at the actual unit prices bid.

2. "Buy America." For proposed Contracts where unit bid prices are submitted for both domestic and foreign steel or iron materials, the total bid amount will be calculated using both the domestic and foreign steel unit bid prices. If the total bid amount using the foreign steel or iron materials is the low bid, and the lowest bid using domestic steel or iron materials exceeds the low bid using foreign steel or iron materials by 25% or more, the apparent low Bidder will be the bid using foreign steel or iron materials. If the difference between the low bid using foreign steel or iron materials and the lowest bid using domestic steel or iron materials is less than 25%, the apparent low Bidder will be the bid using domestic steel or iron materials.

3. Home State Bidding Preference. For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the total bid amount will be based upon the reverse application of the non-resident Bidder's home state bidding preference, if any.

2.15. Consideration of Bid Errors. The Department will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- Submit written notification to the Department within 5 business days after the date the bid is opened.
- Identify the Items of work involved and include bidding documentation. The Department may request clarification of submitted documentation.

The Department will evaluate the claim of an error by the apparent low Bidder by considering the following:

- The bid error relates to a material Item of work.
- The bid error amount is a significant portion of the total bid.
- The bid error occurred despite the exercise of ordinary care.
- The delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Department will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the Department.

2.17. Electronic Bidding. Take responsibility for correctly installing the EBS software. Secure the digital certificate issued by the department at all times. Promptly report compromised digital certificates to the Department. Select an Internet Service Provider. The Department will not be responsible for Internet unavailability. The Department will not provide a computer for preparing, submitting, revising or withdrawing an electronic bid.

2.18. Bid Form Content. The electronic and the EBS printed bid form do not contain such things as the special provisions, special specifications, and general notes. These documents are included by reference. Manual bid forms (traditional proposals) will include such provisions.

SPECIAL PROVISION

003---033

Award and Execution of Contract

For this project, Item 003, "Award and Execution of Contract," of the Standard Specifications, is amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed.

Article 3.4. Execution of Contract, Section B, Bonds. The first paragraph is supplemented by the following:

Sample versions of the standard performance and payment bonds may be viewed on the department's Internet site at:

<http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/contractors.html>

2004 Specifications

SPECIAL PROVISION**004---017****Scope of Work**

For this project, Item 4, "Scope of Work," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 4.2. Changes in the Work. The first paragraph is supplemented by the following:

The Contractor is responsible for notifying the sureties of any changes to the contract.

Article 4.2. Changes in the Work. The sixth paragraph is voided and replaced by the following:

When the quantity of work to be done under any major item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price. When mutually agreed, the unit price may be adjusted by multiplying the Contract unit price by the factor in Table 1. If an adjusted unit price cannot be agreed upon, the Engineer may determine the unit price by multiplying the Contract unit price by the factor in Table 1.

Table 1
Quantity-Based Price Adjustment Factors

% of Original Quantity	Factor
≥ 50 and < 75	1.05
≥ 25 and < 50	1.15
< 25	1.25

Article 4.4. Requests and Claims for Additional Compensation, Section A., Delay Claims is voided and replaced by the following:

A. Damages. Damages occur when impacts that are the responsibility of the Department result in additional costs to the contractor that could not have been reasonably anticipated at the time of letting. Costs of performing additional work are not considered damages. For contractor damages, the intent is to reimburse the Contractor for actual expenses arising out of a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in accordance with the methodology provided by the Department, submitted separately for project overhead labor and direct labor, and determined and submitted by a Certified Public Accountant (CPA). Submit CPA-prepared labor burden rates directly to the Contract Letting and Contractor Prequalification Branch of the Construction Division.

1. **Delay Damages.** If the Contractor requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and will be limited as follows:
 - a. **Standby Equipment Costs.**
 - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.
 - No more than 8 hr. of standby will be paid during a 24-hr. day, nor more than 40 hr. per week, nor more than 176 hr. per month.
 - For Contractor-owned equipment, standby will be paid at 50% of the rental rates found in the Rental Rate Blue Book for Construction Equipment and calculated by dividing the monthly rate by 176 and multiplying by the regional adjustment factor and the rate adjustment factor. For leased equipment on standby, 100% of the invoice cost of the leased equipment will be paid. Operating costs will not be allowed.
 - b. **Project Overhead.** Project overhead is defined as the administrative and supervisory expenses incurred at the work locations. When delay to project completion occurs, reimbursement for project overhead for the prime contractor will be made using the following options:
 - reimbursed at 6% (computed as daily cost by dividing 6% of the original contract amount by the as-let number of working days) or
 - actual documented costs for the impacted period.

Project overhead for delays impacting sub-contractors will be determined from actual documented costs submitted by the Contractor.

The granting of time extensions and suspensions alone will not be justification for reimbursement for project overhead.
 - c. **Home Office Overhead.** The Department will not compensate the Contractor for home office overhead.

Article 4.4. Requests and Claims for Additional Compensation, Section B., Dispute or Claims Procedure is voided and replaced by the following:

- B. **Dispute or Claims Procedure.** Work with the Engineer to resolve or escalate all issues in accordance with the procedures outlined at the pre-construction conference. Establish with the Engineer an issue escalation ladder and adhere to the following:
 1. **Project Pledge.** At a minimum, Contractor representatives at the level of foreman and above will certify in writing they will approach the construction of this project in a manner consistent with delivering a high quality project in a safe, cost-effective, and timely manner, and they will be committed to not allowing personality conflicts or personal interests to interfere with providing the public with a quality project. Failure to uphold this commitment may result in grounds for removal from the project by the District Engineer.

2. **Issue Resolution Process.** An issue is any aspect of the contract where representatives of the participants in the contract do not agree. The individuals identified at the lowest level of the issue escalation ladder will initiate the issue resolution process by escalating any issue that remains unresolved within the time frame outlined in the issue escalation ladder.

Use the Department's automated issue tracking system to submit and track issues escalated to the area engineer or above. Do not use the automated issue tracking system for routine issues resolved on the project.

Once the issue is recorded in the automated issue tracking system, the issue will be escalated to the district engineer within 15 calendar days.

The district engineer will issue written direction within 7 calendar days.

Work with the district to resolve all issues during the course of the contract. In the event the district and the Contractor cannot resolve an issue, the Contractor may file a contract claim after the completion of the contract to be handled in accordance with the Department's contract claim procedure. Contract claims will not be presented to the Contract Claims Committee for consideration prior to the final payment to the Contractor. It is the Contractor's responsibility to prove or justify all claims and requests in a timely manner.

The deadline for filing a claim in accordance with 43 TAC Section 9.2, is the earlier of 1 year after the date of final acceptance, date of default, or date of termination except that claims for warranty enforcement can be made up to 1 year after expiration of the warranty period.

2004 Specifications

SPECIAL PROVISION

005---004

Control of the Work

For this project, Item 005, "Control of the Work," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 5.2 Plans and Working Drawings, is supplemented with the following:

Submit shop drawings electronically for the fabrication of structural items as documented in the "Guide to Electronic Shop Drawing Submittal" available on the internet at ftp://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/e_submit_guide.pdf and as directed by the Engineer for other items required by the standard specifications. References to 11 x 17 sheets in individual specifications for structural items imply electronic CAD sheets.

2004 Specifications

SPECIAL PROVISION**006---030****Control of Materials**

For this project, Item, Item 006, "Control of Materials," of the Standard Specifications is amended hereby with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 6.9. Recycled Materials is voided and replaced by the following:

The Department will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling. Use nonhazardous recyclable materials (NRMs) only if the Specification for the Item does not disallow or restrict use. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Use NRMs in accordance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines," and furnish all documentation required by that Specification.

Article 6.10. Hazardous Materials is voided and replaced by the following:

Use materials that are free of hazardous materials as defined in Item 1, "Definition of Terms."

Notify the Engineer immediately when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the Department may contain hazardous materials. Except in the case of Section 6.10.A.1.a, "Cleaning and Painting Steel" below, the Department is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Department as indicated below. The plans will indicate locations where paint on steel is suspected to contain hazardous materials and where regulated asbestos containing materials have been found. The Engineer may suspend work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the Department, except in the case of Section 6.10.A.1.a.

When a visual observation or odor indicates that materials delivered to the work locations by the Contractor may contain hazardous materials, have an approved commercial laboratory test the materials for contamination. Remove, remediate, and dispose of any of these materials found to be contaminated. Testing, removal, and disposition of hazardous materials introduced onto the work locations by the Contractor will be at the Contractor's expense. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material delivered by the Contractor.

A. Painted Steel Requirements. As shown on the plans, existing paint on steel may contain hazardous materials. Perform work in accordance with the following:

1. Removing Paint from Steel.

- a. **Cleaning and Painting Steel.** For contracts that are primarily for painting existing steel, perform the work in accordance with Item 446, "Cleaning and Painting Steel."
 - b. **Other Contracts.** For all other projects when an existing paint must be removed to perform other work, perform paint removal work in accordance with Item 446, "Cleaning and Painting Steel" unless the paint is shown or determined to contain hazardous materials. If the paint is shown or determined to contain hazardous materials, the Department will provide for a separate contractor to remove paint prior to or during the Contract to allow dismantling of the steel for the Contractor's salvaging, reuse, or recycling or where paint must be removed to perform other work. For steel that is dismantled by unbolting, no paint stripping will be required. Use care to not damage existing paint. When dismantling is performed using flame or saw-cutting methods to remove steel elements coated with paint containing hazardous materials, the plans will show stripping locations. Coordinate with the separate contractor for stripping work to be performed during the Contract.
2. **Removal and Disposal of Painted Steel.** For Contracts where painted steel is to be removed and disposed of by the Contractor, painted steel may be reused or disposed of at a steel recycling or smelting facility. If the paint is shown or determined to contain hazardous materials, maintain and make available to the Engineer invoices and other records showing the reuse owner or for recycling, records obtained from the recycling or smelting facility showing the received weight of the steel and the facility name. Painted steel to be retained by the Department will be shown on the plans.
- B. Asbestos Requirements.** The plans will indicate locations or elements where asbestos containing materials (ACM) have been found. At these locations or at locations where previously unknown ACM has been found, the Department will arrange for abatement by a separate contractor during the Contract. For work at these locations, notify the Engineer of proposed dates of demolition or removal of structural elements with ACM at least 60 days before work is to begin to allow the Department sufficient time to abate the asbestos.

When the work by a separate contractor for removal of paint or asbestos abatement is to be performed during the Contract, provide traffic control as shown on the plans and coordinate and cooperate with the separate contractor. Continue other work detailed in the plans not directly involved in the paint removal or asbestos abatement work. Coordinate with the Department the timing of the separate contractor's work in advance in order to allow the Department to schedule work with the separate contractor. Work for the traffic control and other work will not be paid for directly but will be subsidiary to pertinent Items.

SPECIAL PROVISION

006---047

Control of Materials

For this project, Item 006, "Control of Materials," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 6.4. Sampling, Testing and Inspection is supplemented by the following:

Meet with the Engineer and choose either the Department or a Department-selected Commercial Lab (CL) for conducting the subset of project-level sampling and testing shown in Table 1, "Select Guide Schedule Sampling and Testing." Selection may be made on a test by test basis. CLs will meet the testing turnaround times shown (includes test time and time for travel/sampling and reporting) and in all cases issue test reports as soon as possible.

If the Contractor chooses a Department-selected CL for any Table 1 sampling and testing:

- notify the Engineer, District Lab, and the CL of project scheduling that may require CL testing;
- provide the Engineer, District Lab, and CL at least 24 hours notice by phone and e-mail;
- reimburse the Department for CL Table 1 testing using the contract fee schedule for the CL (including mileage and travel/standby time) at the minimum guide schedule testing frequencies;
- reimburse the Department for CL Table 1 testing above the minimum guide schedule frequencies for retesting when minimum frequency testing results in failures to meet specification limits;
- agree with the Engineer and CL upon a policy regarding notification for testing services;
- give any cancellation notice to the Engineer, District Lab, and CL by phone and e-mail;
- reimburse the Department a \$150 cancellation fee to cover technician time and mileage charges for previously scheduled work cancelled without adequate notice, which resulted in mobilization of technician and/or equipment by the CL; and
- all CL charges will be reimbursed to the Department by a deduction from the Contractor's monthly pay estimate.

If the CL does not meet the Table 1 turnaround times, testing charge to the Contractor will be reduced by 50% for the first late day and an additional 5% for each succeeding late day.

Approved CL project testing above the minimum testing frequencies in the Guide Schedule of Sampling and Testing, and not as the result of failing tests, will be paid by the Department.

Other project-level Guide Schedule sampling and testing not shown on Table 1 will be the responsibility of the Department.

Table 1
Select Guide Schedule Sampling and Testing (Note 1)

TxDOT Test	Test Description	Turn-Around Time (Calendar days)
SOILS/BASE		
Tex-101-E	Preparation of Soil and Flexible Base Materials for Testing (included in other tests)	
Tex-104-E	Liquid Limit of Soils (included in 106-E)	
Tex-105-E	Plastic Limit of Soils (included in 106-E)	
Tex-106-E	Calculating the Plasticity Index of Soils	7
Tex-110-E	Particle Size Analysis of Soils	6
Tex-113-E	Moisture-Density Relationship of Base Materials	7
Tex-114-E	Moisture-Density Relationship of Subgrade and Embankment Soil	7
Tex-115-E	Field Method for In-Place Density of Soils and Base Materials	2
Tex-116-E	Ball Mill Method for the Disintegration of Flexible Base Material	5
Tex-117-E, Part II	Triaxial Compression Tests For Disturbed Soils and Base Materials (Part II)	6
Tex-113-E w/ Tex-117-E	Moisture-Density Relationship of Base Materials with Triaxial Compression Tests For Disturbed Soils and Base Materials (Part II)	10
Tex-140-E	Measuring Thickness of Pavement Layer	2
Tex-145-E	Determining Sulfate Content in Soils - Colorimetric Method	4
HOT MIX ASPHALT		
Tex-200-F	Sieve Analysis of Fine and Coarse Aggregate (dry, from ignition oven with known correction factors)	1 (Note 2)
Tex-203-F	Sand Equivalent Test	3
Tex-206-F w/ Tex-207-F, Part I, w/ Tex-227-F	(Lab-Molded Density of Production Mixture – Texas Gyrotory) Method of Compacting Test Specimens of Bituminous Mixtures with Density of Compacted Bituminous Mixtures, Part I - Bulk Specific Gravity of Compacted Bituminous Mixtures, with Theoretical Maximum Specific Gravity of Bituminous Mixtures	1 (Note 2)
Tex-207-F, Part I &/or Part VI	(In-Place Air Voids of Roadway Cores) Density of Compacted Bituminous Mixtures, Part I- Bulk Specific Gravity of Compacted Bituminous Mixtures &/or Part VI - Bulk Specific Gravity of Compacted Bituminous Mixtures Using the Vacuum Method	1 (Note 2)
Tex-207-F, Part V	Density of Compacted Bituminous Mixtures, Part V- Determining Mat Segregation using a Density-Testing Gauge	3
Tex-207-F, Part VII	Density of Compacted Bituminous Mixtures, Part VII - Determining Longitudinal Joint Density using a Density-Testing Gauge	4
Tex-212-F	Moisture Content of Bituminous Mixtures	3
Tex-217-F	Deleterious Material and Decantation Test for Coarse Aggregate	4
Tex-221-F	Sampling Aggregate for Bituminous Mixtures, Surface Treatments, and LRA (included in other tests)	
Tex-222-F	Sampling Bituminous Mixtures (included in other tests)	
Tex-224-F	Determination of Flakiness Index	3
Tex-226-F	Indirect Tensile Strength Test (production mix)	4
Tex-235-F	Determining Draindown Characteristics in Bituminous Materials	3
Tex-236-F (Correction Factors)	Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Determining Correction Factors)	4
Tex-236-F	Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Production Mixture)	1 (Note 2)
Tex-241-F w/ Tex-207-F, Part I, w/ Tex-227-F	(Lab-Molded Density of Production Mixture – Superpave Gyrotory) Superpave Gyrotory Compacting of Specimens of Bituminous Mixtures (production mixture) with Density of Compacted Bituminous Mixtures, Part I- Part I - Bulk Specific Gravity of Compacted Bituminous Mixtures, with Theoretical Maximum Specific Gravity of Bituminous Mixtures	1 (Note 2)

Tex-242-F	Hamburg Wheel-Tracking Test (production mix, molded samples)	3
Tex-244-F	Thermal Profile of Hot Mix Asphalt	1
Tex-246-F	Permeability of Water Flow of Hot Mix Asphalt	3
Tex-280-F	Flat and Elongated Particles	3
Tex-530-C	Effect of Water on Bituminous Paving Mixtures (production mix)	4
AGGREGATES		
Tex-400-A	Sampling Flexible Base, Stone, Gravel, Sand, and Mineral Aggregates	3
Tex-410-A	Abrasion of Coarse Aggregate Using the Los Angeles Machine	5
Tex-411-A	Soundness of Aggregate by Use of Sodium Sulfate or Magnesium Sulfate	12
Tex-461-A	Degradation of Coarse Aggregate by Micro-Deval Abrasion	5
CHEMICAL		
Tex-612-J	Acid Insoluble Residue for Fine Aggregate	4
GENERAL		
HMA Production Specialist [TxAPA – Level 1-A] (\$/hr)		
HMA Roadway Specialist [TxAPA – Level 1-B] (\$/hr)		
Technician Travel/Standby Time (\$/hr)		
Per Diem (\$/day – meals and lodging)		
Mileage Rate (\$/mile from closest CL location)		
<p>Note 1– Turn-Around Time includes test time and time for travel/sampling and reporting. Note 2 – These tests require turn-around times meeting the governing specifications. Provide test results within the stated turn-around time. CL is allowed one additional day to provide the signed and sealed report.</p>		

2004 Specifications

SPECIAL PROVISION

007---918

Legal Relations and Responsibilities

For this project, Item 7, "Legal Relations and Responsibilities" of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 7.4. Insurance and Bonds is voided and replaced by the following:

As specified in Article 3.4, "Execution of Contract," provide the Department with a Certificate of Insurance verifying the types and amounts of coverage shown in Table 1. The Certificate of Insurance must be in a form approved by the Texas Department of Insurance Any Certificate of Insurance provided shall be available for public inspection.

**Table 1
Insurance Requirements**

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Not Less Than: \$600,000 each occurrence
Business Automobile Policy	Not Less Than: \$600,000 combined single limit
Workers' Compensation	Not Less Than: Statutory
All Risk Builder's Risk Insurance (For building-facilities contracts only)	100% of Contract Price

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance or legitimate alternates. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 1 either through their own coverage or through the Contractor's coverage.

Insurances must cover the contracted work for the duration of the Contract and must remain in effect until final acceptance. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Department receives an acceptable Certificate of Insurance.

The Workers' Compensation policy must include a waiver of subrogation endorsement in favor of the State.

For building-facilities contracts, provide All Risk Builder's Risk Insurance to protect the Department against loss by storm, fire or extended coverage perils on work and materials intended for use on the project including the adjacent structure. Name the Department under the Lost Payable Clause.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety's underwriting limitation drops below the Contract amount or the Surety's right to do business is terminated by the State. The substitute Surety must be authorized by the laws of the State and acceptable to the Department. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

Article 7.8. Hauling and Loads on Roadways and Structures is supplemented by the following:

D. Stockpiling of Materials. Do not store or stockpile material on bridge structures without written permission. If required, submit a structural analysis and supporting documentation by a licensed professional engineer for review by the Engineer. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

Article 7.14. Contractor's Responsibility for Work, Section B. Appurtenances is voided and replaced by the following:

B. Appurtenances.

1. **Unreimbursed Repair.** Except for destruction (not reusable) due to hurricanes, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:
 - signs,
 - barricades,
 - changeable message signs, and
 - other work zone traffic control devices.

Crash cushion attenuators and guardrail end treatments are the exception to the above listing and are to be reimbursed in accordance with Section 7.14.B.2, "Reimbursed Repair."

For the devices listed in this section, reimbursement may be made for damage due to hurricanes. Where the contractor retains replaced appurtenances after completion of the project, the Department will limit the reimbursement to the cost that is above the salvage value at the end of the project.

2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7.14.A, "Reimbursable Repair," to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).

Article 7.15. Electrical Requirements, Section A. Definitions, Section 3. Certified Person is voided and replaced by the following:

3. Certified Person. A certified person is a person who has passed the test from the TxDOT course TRF450, "TxDOT Roadway Illumination and Electrical Installations" or other courses as approved by the Traffic Operations Division. Submit a current and valid TRF certification upon request. On June 1, 2011, Texas Engineering Extension Service (TEEX) certifications for "TxDOT Electrical Systems" course will no longer be accepted. All TRF 450 certifications that have been issued for "TxDOT Roadway Illumination and Electrical Installations" course that expire before June 1, 2011 will be accepted until June 1, 2011.

Article 7.15. Electrical Requirements, Section A. Definitions, Section 4. Licensed Electrician is voided and replaced by the following:

4. Licensed Electrician. A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license that is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on state system work.

The unrestricted journeyman and unrestricted master electrical licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states' electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC similar to that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

Article 7.19. Preservation of Cultural and Natural Resources and the Environment is supplemented by the following:

G. Asbestos Containing Material. In Texas, the Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated "facility" under NESHAP. Therefore, federal standards for demolition and renovation apply.

Provide notice to the Department of demolition or renovation to the structures listed in the plans at least 30 calendar days prior to initiating demolition or renovation of each structure or load bearing member. Provide the scheduled start and completion date of structure demolition, renovation, or removal.

When demolition, renovation, or removal of load bearing members is planned for several phases, provide the start and completion dates identified by separate phases.

DSHS requires that notifications be postmarked at least 10 working days prior to initiating demolition or renovation. If the date of actual demolition, renovation, or removal is changed, the Department will be required to notify DSHS at least 10 days in advance of the work. This notification is also required when a previously scheduled (notification sent to DSHS) demolition, renovation or removal is delayed. Therefore, if the date of actual demolition, renovation, or removal is changed, provide the Engineer, in writing, the revised dates in sufficient time to allow for the Department's notification to DSHS to be postmarked at least 10 days in advance of the actual work.

Failure to provide the above information may require the temporary suspension of work under Article 8.4, "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Department retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

Article 7.20, Agricultural Irrigation. This Item is supplemented by the following:

Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the Irrigation District or land owner to determine the proper time and sequence when irrigation demands will permit shutting-off water flows to perform work.

Unless otherwise provided on the plans, the work required by these provisions will not be paid for directly but shall be considered as subsidiary work pertaining to the various bid items of this contract.

2004 Specifications

SPECIAL PROVISION

008---119

Prosecution and Progress

For this project, Item 8, "Prosecution and Progress," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 8.8. Subcontracting, is supplemented with the following:

For all DBE subcontracts including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.

2004 Specifications

SPECIAL PROVISION

009---009

Measurement and Payment

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.6. Progress Payments, Section A, Retainage is voided and replaced by the following:

A. Retainage. Retainage will not be withheld on this project.

Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors is voided and replaced by the following:

B. Payment Provisions for Subcontractors. For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected, approved, and paid by the Department.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

2004 Specifications

SPECIAL PROVISION

009---015

Measurement and Payment

For this project, Item 9, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.5. Force Account, B. Insurance and Taxes is replaced by the following:

B. Labor Burden. An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9.5.A, "Labor," will be paid as compensation for labor insurance and labor taxes including the cost of premiums on non-project specific liability (excluding vehicular) insurance, workers compensation insurance, Social Security, unemployment insurance taxes, and fringe benefits.

2004 Specifications

SPECIAL PROVISION

100---002

Preparing Right of Way

For this project, Item 100, "Preparing Right of Way," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 100.4. Payment. The second paragraph is voided and replaced by the following:

Total payment of this Item will not exceed 10% of the original contract amount until final acceptance. The remainder will be paid on the estimate after the final acceptance under Article 5.8, "Final Acceptance."

2004 Specifications

SPECIAL PROVISION

164---002

Seeding For Erosion Control

Item 164, "Seeding For Erosion Control," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 164.3. Construction. The following is added after the first sentence:

Use approved equipment to vertically track the seedbed as shown on the plans or as directed by the Engineer.

2004 Specifications

SPECIAL PROVISION**247---033****Flexible Base**

For this project, Item 247, "Flexible Base," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 247.2. Materials, Section A. Aggregate, Table 1. Material Requirements is replaced by the following:

**Table 1
Material Requirements**

Property	Test Method	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
Master gradation sieve size (cumulative % retained)	Tex-110-E				As shown on the plans	
2-1/2 in.		--	0	0		0
1-3/4 in.		0	0-10	0-10		0-5
7/8 in.		10-35	--	--		10-35
3/8 in.		30-50	--	--		35-65
No. 4		45-65	45-75	45-75		45-75
No. 40	70-85	60-85	50-85	70-90		
Liquid Limit, % max. ¹	Tex-104-E	35	40	40	As shown on the plans	35
Plasticity Index, max. ¹	Tex-106-E	10	12	12	As shown on the plans	10
Plasticity index, min. ¹						
Wet ball mill, % max. ²	Tex-116-E	40	45	--	As shown on the plans	40
Wet ball mill, % max. increase passing the No. 40 sieve		20	20	--	As shown on the plans	20
Classification, max. ³	Tex-117-E	When shown on the plans	When shown on the plans	--	As shown on the plans	--
Min. compressive strength, psi	Tex-117-E				As shown on the plans	
lateral pressure 0 psi		45	35	--		--
lateral pressure 3 psi		--	--	--		90
lateral pressure 15 psi		175	175	--		175

1. Determine the plastic index in accordance with Tex-107-E (linear shrinkage) when liquid limit is unattainable as defined in Tex-104-E.

2. When a soundness value is required by the plans, test material in accordance with Tex-411-A.

3. When Classification is required by the plans, a triaxial Classification of 1.0 or less for Grades 1 and 2.3 or less for Grade 2 is required. The Classification requirement for Grade 4 will be as shown on the plans.

Article 247.2. Materials, Section A. Aggregate, Section 3. Recycled Material, Section b. Recycled Material (Including Crushed Concrete) Requirements, Section (1), Contractor Furnished Recycled Materials is supplemented by the following:

Provide recycled materials that have a maximum sulfate content of 3000 ppm when tested in accordance with Tex-145-E.

Article 247.4. Construction, Section C. Compaction is supplemented by the following:

Before final acceptance, the Engineer will select the locations of tests and measure the flexible base depth in accordance with Tex-140-E when Complete in Place measurement is specified. Correct areas deficient by more than 1/2 in. in thickness by scarifying, adding material as required, reshaping, recompacting, and refinishing at the Contractor's expense.

Article 247.4. Construction, Section C. Compaction, Section 2. Density Control first paragraph is replaced by the following:

Compact to at least 100% of the maximum dry density determined by Tex-113-E, unless otherwise shown on the plans. Maintain moisture during compaction at not less than 1 percentage point below the optimum moisture content determined by Tex-113-E. Determine the moisture content of the material in accordance with Tex-115-E or Tex-103-E during compaction daily and report the results the same day to the Engineer, unless otherwise shown on the plans or directed.

2004 Specifications

SPECIAL PROVISION

260---003

Lime Treatment (Road-Mixed)

For this project, Item 260, "Lime Treatment (Road-Mixed)," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 260.2. Materials, Section A. Lime. The first two sentences are voided and replaced by the following:

Furnish lime that meets the requirements of DMS-6350 "Lime and Lime Slurry," and DMS-6330, "Prequalification of Lime Sources." Use hydrated lime, commercial lime slurry, quicklime, or carbide lime slurry as shown on the plans.

Article 260.3. Equipment, Section B. Slurry Equipment. The last sentence of the second paragraph is voided and replaced by the following:

Equip the distributor truck with a sampling device in accordance with Tex-600-J, Part I, when using commercial lime slurry or carbide lime slurry.

Article 260.4. Construction, Section C. Application of Lime, Section 2. Slurry Placement. The first paragraph is voided and replaced with the following:

Provide slurry free of objectionable materials, at or above the minimum dry solids content, and with a uniform consistency that will allow ease of handling and uniform application. Deliver commercial lime slurry or carbide lime slurry to the jobsite, or use hydrated lime or quicklime to prepare lime slurry at the jobsite or other approved location, as specified. When dry quicklime is applied as a slurry, use 80 percent of the amount shown on the plans.

Article 260.4. Construction, Section D. Mixing. The third paragraph is voided and replaced with the following:

After mixing, the Engineer may sample the mixture at roadway moisture and test in accordance with Tex-101-E, Part III, to determine compliance with the gradation requirements in Table 1.

Article 260.5. Measurement, Section A. Lime is supplemented by the following:

4. Carbide Lime Slurry. Lime slurry will be measured by the ton (dry weight) as calculated from the minimum percent dry solids content of the slurry, multiplied by the weight of the slurry in tons delivered.

Article 260.6. Payment. The first paragraph is voided and replaced by the following:

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid in accordance with Section 260.6.A, "Lime," and Section 260.6.B, "Lime Treatment."

Article 260.6. Payment, Section A. Lime. The first sentence is voided and replaced by the following:

A. Lime. Lime will be paid for at the unit price bid for "Lime" of one of the following types:

- Hydrated Lime (Dry),
- Hydrated Lime (Slurry),
- Commercial Lime Slurry,
- Quicklime (Dry),
- Quicklime (Slurry), or
- Carbide Lime Slurry.

Article 260.6. Payment, Section B. Lime Treatment is voided and replaced by the following:

B. Lime Treatment. Lime treatment will be paid for at the unit price bid for "Lime Treatment (Existing Material)," "Lime Treatment (New Base)," or "Lime Treatment (Mixing Existing Material and New Base)," for the depth specified. No payment will be made for thickness or width exceeding that shown on the plans. This price is full compensation for shaping existing material, loosening, mixing, pulverizing, spreading, applying lime, compacting, finishing, curing, curing materials, blading, shaping and maintaining shape, replacing mixture, disposing of loosened materials, processing, hauling, preparing secondary subgrade, water, equipment, labor, tools, and incidentals.

2004 Specifications

SPECIAL PROVISION

316---016

Surface Treatments

For this project, Item 316, "Surface Treatments", of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 316.3.A.3. Computerized Distributor. This section is voided and not replaced.

Article 316.4.D.3. Asphalt Material Designed for Winter Use. This section is voided and replaced by the following:

A. Cold Weather Surface Treatments. When asphalt application is allowed outside of the above temperature restrictions, the Engineer will approve the binder grade and the air and surface temperatures for asphalt material application. Apply surface treatment at air and surface temperatures as directed.

Article 316.5.A. Asphalt Material. This section is voided and replaced by the following:

B. Asphalt Material. Asphalt material will be measured at the applied temperature by strapping the tank just before and just after road application and determining the net volume in gallons from the distributor's calibrated strap stick. The quantity to be measured for payment will be the number of gallons used, as directed, in the accepted surface treatment.

2004 Specifications

Pharr District

SPECIAL PROVISION**400---007****Excavation and Backfill for Structures**

For this project, Item 400, "Excavation and Backfill for Structures," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 400.2. Materials is supplemented by the following:

Unless otherwise shown on the plans, the sand backfill shall have 70-100% passing a No. 10 sieve. The plastic Index (PI) as determined by Test Method Tex-106-E shall not exceed 6. At all pipe joints backfilled with sand, the Contractor shall install a filter fabric designed to prevent the migration of sand into the pipes as approved by the Engineer. Filter fabric shall meet the requirements of DMS-6200, Type I.

Unless otherwise shown on the plans, the gravel shall conform to Aggregate Grade No. 1, 2, 3 or 4 requirements shown on Table 3 of Article 421.2.

Article 400.4. Measurement is supplemented by the following:

D. Sand Backfill. Sand Backfill will be measured by the cubic yard. When shown on the plans, the excavation shall be backfilled to the elevations shown with sand. The sand backfill will be measured in accordance with the backfill diagram shown on the plans.

E. Structural Excavation (Special). Structural Excavation (Special) for Gravel Bedding will be measured by the cubic yard.

Article 400.5. Payment, Section A. Structural Excavation is supplemented by the following:

When the plans specify or when the Engineer directs the use of gravel bedding material, excavation below the footing grades will be measured and paid for as "Structural Excavation (Special)". The unit price bid for "Structural Excavation (Special)" shall also be full compensation for furnishing, hauling and placing gravel bedding material and for all labor, equipment, tools and incidentals necessary to complete the work.

Article 400.5. Payment, Section E. Cutting and Restoring Pavement. The first sentence is voided and replaced by the following:

Cutting and restoring pavement will be paid for at the unit price bid for "Cutting and Restoring Pavement" of the type specified.

Article 400.5. Payment is supplemented by the following:

F. Sand Backfill. The unit price bid for “Sand Backfill” shall be full compensation for excavation and furnishing sand backfill and filter fabric, hauling, placing and compacting the sand backfill and filter fabric; and materials, equipment, labor, tools and incidentals.

2004 Specifications

SPECIAL PROVISION

462---015

Concrete Box Culverts and Storm Drains

For this project, Item, 462, "Concrete Box Culverts and Storm Drains," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 462.2. Materials, Section A. General. The last two paragraphs are voided and replaced by the following:

Furnish material for machine-made precast boxes in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Box Culvert Fabrication and Plant Qualification."

Article 462.2. Materials, Section B. Fabrication, 3. Machine-Made Precast is voided and replaced by the following:

Machine-made precast box culvert fabrication plants must be approved in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Box Culvert Fabrication and Plant Qualification." The Construction Division maintains a list of approved machine-made precast box culvert plants.

Fabricate machine-made precast boxes in accordance with DMS-7310.

Article 462.2. Materials, Section C. Testing, 2. Formed Precast is voided and replaced by the following:

Make, cure, and test compressive test specimens in accordance with Tex-704-I.

Article 462.2 Materials, Section C. Testing, 3. Machine-Made Precast is voided and replaced by the following:

Make, cure, and test compressive test specimens in accordance with DMS-7310.

Article 462.2. Materials, Section D. Lifting Holes. The first paragraph is voided and replaced by the following:

For precast boxes, provide no more than 4 lifting holes in each section. Lifting holes may be cast, cut into fresh concrete after form removal, or drilled. Provide lifting holes of sufficient size for adequate lifting devices based on the size and weight of the box section. Do not use lifting holes larger than 3 in. in diameter. Do not cut more than 5 in. in any direction of reinforcement per layer for lifting holes.

Article 462.2. Materials, Section E. Marking. The first paragraph is voided and replaced by the following:

Mark precast boxes with the following:

- name or trademark of fabricator and plant location;
- ASTM designation;
- date of manufacture;
- box size;
- minimum and maximum fill heights;
- designated fabricator's approval stamp;
- boxes to be used for jacking and boring (when applicable);
- designation "SR" for boxes meeting sulfate-resistant concrete plan requirements (when applicable); and
- match marks for proper installation, when required under Section 462.2.F, "Tolerances."

Article 462.2. Materials, Section F. Tolerances. is voided and replaced by the following:

Ensure that precast sections meet the permissible variations listed in ASTM C 1577 and the following requirement:

- The sides of a section at each end do not vary from being perpendicular to the top and bottom by more than 1/2 in. when measured diagonally between opposite interior corners.

Ensure that wall and slab thicknesses are not less than shown on the plans except for occasional deficiencies not greater than 3/16 in. or 5%, whichever is greater. If proper jointing is not affected, thicknesses in excess of plan requirements are acceptable.

Deviations from the above tolerances will be acceptable if the sections can be fitted at the plant or job site and the joint opening at any point does not exceed 1 in. Use match marks for proper installation on sections that have been accepted in this manner.

1. Boxes for Jacking Operations. For boxes to be used for jacking operations (as defined in Item 476, "Jacking, Boring, or Tunneling Pipe or Box,") meet the following additional requirements:

- The box ends must be square such that no point deviates more than 3/8 in. from a plane placed on the end of the box that is perpendicular to the box sides, and
- The slab and wall thicknesses must not be less than specified on the plans and must not exceed the specified thickness by more than 1/2 in.

Article 462.2. Materials, Section G. Defects and Repair. The following paragraph is added:

Repair machine-made precast boxes in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Box Culvert Fabrication and Plant Qualification."

Article 462.2. Materials, Section H. Storage and Shipment. The following paragraph is added:

Store and ship machine-made precast boxes in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Box Culvert Fabrication and Plant Qualification."

Article 462.3 Construction, Section C. Jointing. The first paragraph is voided and replaced by the following:

Unless otherwise shown on the plans, use any of the jointing materials in accordance with the joint requirements specified in Item 464, "Reinforced Concrete Pipe." Rubber gasketed joints may be substituted for tongue and groove joints, provided they meet the requirements of ASTM C 1677 for design of the joints and permissible variations in dimensions.

2004 Specifications

SPECIAL PROVISION**464---006****Reinforced Concrete Pipe**

For this project, Item 464, "Reinforced Concrete Pipe," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 464.2. Materials, Section A. Fabrication is voided and replaced by the following:

Fabrication plants must be approved by the Construction Division in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Concrete Box Culvert Fabrication and Plant Qualification," before furnishing precast reinforced concrete pipe for Department projects. The Construction Division maintains a list of approved reinforced concrete pipe plants.

Furnish material and fabricate reinforced concrete pipe in accordance with DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Concrete Box Culvert Fabrication and Plant Qualification."

Article 464.2. Materials, Section B. Design, 1. General. Table 2 is voided and replaced by the following:

Table 2
Arch Pipe

Design Size	Equivalent Diameter (in.)	Rise (in.)	Span (in.)
1	18	13-1/2	22
2	21	15-1/2	26
3	24	18	28-1/2
4	30	22-1/2	36-1/4
5	36	26-5/8	43-3/4
6	42	31-5/16	51-1/8
7	48	36	58-1/2
8	54	40	65
9	60	45	73
10	72	54	88

Article 464.2 Materials, Section C. Physical Test Requirements is voided and not replaced.

Article 464.2. Materials, Section D. Markings. The first paragraph is voided and replaced by the following:

Furnish each section of reinforced concrete pipe marked with the following information specified in DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Concrete Box Culvert Fabrication and Plant Qualification":

- class or D-Load of pipe,
- ASTM designation,
- date of manufacture,
- pipe size,
- name or trademark of fabricator and plant location,
- designated fabricator's approval stamp,
- pipe to be used for jacking and boring (when applicable), and
- designation "SR" for pipe meeting sulfate-resistant concrete plan requirements (when applicable).

Article 464.2. Materials, Section E. Inspection is voided and replaced by the following:

Provide access for inspection of the finished pipe at the project site before and during installation.

Article 464.2. Materials, Section F. Causes for Rejection is voided and replaced by the following:

Individual section of pipe may be rejected for any of the conditions stated in the Annex of DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Concrete Box Culvert Fabrication and Plant Qualification."

Article 464.2. Materials, Section G. Repairs is voided and replaced by the following:

Make repairs if necessary as stated in the Annex of DMS-7310, "Reinforced Concrete Pipe and Machine-Made Precast Concrete Box Culvert Fabrication and Plant Qualification."

Article 464.2. Materials, Section H. Rejections is voided and not replaced.

2004 Specifications

For One-Time-Use only

SPECIAL PROVISION

465---002

Manholes and Inlets

For this project, Item 465, "Manholes and Inlets," of the Standard Specifications, is hereby voided and replaced with the articles below.

465.1 Description. Construct manholes and inlets, complete in place or to the stage detailed, including furnishing and installing frames, grates, rings and covers. Drainage junction boxes are classified as manholes.

465.2 Materials. Furnish materials in accordance with the followings:

- Item 420, "Concrete Structures"
- Item 421, "Hydraulic Cement Concrete"
- Item 440, "Reinforcing Steel"
- Item 471, "Frames, Grates, Rings, and Covers"

Cast-in-place manholes, inlets, risers, and appurtenances are acceptable unless otherwise shown. Alternate designs for cast-in-place items must be acceptable to the Engineer and must conform to functional dimensions and design loading. Alternate designs must be designed and sealed by a licensed professional engineer.

- A. Concrete.** Furnish Class H concrete for formed precast manholes and inlets. Furnish concrete per DMS-7310 for machine-made precast manholes and inlets. Air-entrained concrete will not be required in precast concrete members. Furnish Class C concrete for cast-in-place manholes and inlets unless otherwise shown on the plans.
- B. Mortar.** Furnish Type S mortar in accordance with ASTM C270.
- C. Timber.** Provide sound timber for temporary covers when used with Stage I construction (see Section 465.3, "Construction") that is a minimum of 3 in. nominal thickness and reasonably free of knots and warps.
- D. Other Materials.** Commercial-type hardware of other materials may be used with prior approval.

465.3 Construction. All types of manholes and inlets may be built either complete or in 2 stages, described as Stage I and Stage II. Build manholes and inlets designed to match the final roadway surface.

Construct the Stage I portion of manholes and inlets as shown on the plans or as specified in this Item. Furnish and install a temporary cover as approved by the Engineer.

For Stage I construction of cast iron or steel inlet units, furnish and install the storm drain pipe and a temporary plug for the exposed end of the storm drain pipe from the storm drain to a point below the top of curb indicated on the plans.

Construct Stage II after the pavement structure is substantially complete unless otherwise approved by the Engineer.

For Stage II, construct the remaining wall height and top of manhole or inlet and furnish and install any frames, grates, rings and covers, manhole steps, curb beams, or collecting basins required.

Construct cast-in-place manholes and inlets in accordance with Item 420, "Concrete Structures." Forms will be required for all concrete walls. Outside wall forms for cast-in-place concrete may be omitted with the approval of the Engineer if the surrounding material can be trimmed to a smooth vertical face.

A. Precast Manholes and Inlets. Construct formed precast manholes and inlets in accordance with Item 420, except as otherwise noted in this Item. Construct machine-made precast manholes and inlets in accordance with ASTM C 478, except as otherwise noted in this Item. Mix and place concrete for machine-made manholes and inlets per the requirements of DMS-7310. Conform to the product permissible variations and rejection criteria stated in ASTM C 478 for machine-made precast manholes and inlets. Cure all precast units in accordance with Item 424, "Precast Concrete Structures (Fabrication)."

Multi-project fabrication plants (as defined in Item 424, "Precast Concrete Structures (Fabrication)") that produce manholes and inlets will be approved by the Construction Division in accordance with DMS-7340, "Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Manholes and Inlets." The Construction Division maintains a list of approved multi-project plants.

1. **Lifting Holes.** For precast units, provide no more than 4 lifting holes in each section. Lifting holes may be cast, cut into fresh concrete after form removal, or drilled. Provide lifting holes large enough for adequate lifting devices based on the size and weight of the section. The maximum hole diameter is 3 in. at the inside surface of the wall and 4 in. at the outside surface. Do not cut more than 5 in. in any direction of reinforcement per layer for lifting holes. Repair spalled areas around lifting holes.
2. **Marking.** Clearly mark each precast manhole and inlet unit with the following information:
 - name or trademark of fabricator and plant location;
 - product designation;
 - ASTM designation (if applicable);
 - date of manufacture;
 - designated fabricator's approval stamp; and
 - designation "SR" for product meeting sulfate-resistant concrete plan requirements (when applicable).

3. **Storage and Shipment.** Store precast units on a level surface. Do not ship units until design strength requirements have been met.
- B. Excavation, Shaping, Bedding, and Backfill.** Excavate, shape, bed, and backfill in accordance with Item 400, "Excavation and Backfill for Structures." For all manhole and inlet structures where joints consist of rubber boots, rubber gaskets, bulk or preformed joint sealant, immediate backfilling is permitted. Take precautions in placing and compacting the backfill to avoid any movement of manholes and inlets. Remove and replace manholes and inlets damaged by the Contractor at no expense to the Department.
- C. Manholes and Inlets for Precast Concrete Pipe Storm Drains.** Construct manholes and inlets for precast concrete pipe storm drains as soon as is practicable after storm drain lines into or through the manhole or inlet locations are completed. Neatly cut all storm drains at the inside face of the walls of the manhole or inlet and point up with mortar.
- D. Manholes and Inlets for Monolithic Pipe Storm Drains.** Construct bases for manholes and inlets on monolithic pipe storm drains either monolithically with the storm drain or after the storm drain is constructed.
- E. Manholes for Box Storm Drains.** Cast bases for manholes for box storm drains as an integral part of the storm drain. Construct manholes before backfilling, or cover the manhole opening temporarily and backfill the storm drain as a whole.
- F. Inverts.** Shape and route floor inverts passing out or through the manhole or inlet as shown on the plans. Shape by adding and shaping mortar or concrete after the base is cast or by placing the required additional material with the base.
- G. Finishing Complete Manholes and Inlets.** Complete manholes and inlets in accordance with the plans. Backfill to original ground elevation in accordance with Item 400, "Excavation and Backfill for Structures."
- H. Finishing Stage I Construction.** Complete Stage I construction by constructing the walls to the elevations shown on the plans and backfilling to required elevations in accordance with Item 400, "Excavation and Backfill for Structures."
- I. Stage II Construction.** Construct subgrade and base course or concrete pavement construction over Stage I manhole or inlet construction, unless otherwise approved by the Engineer. Excavate to expose the top of Stage I construction and complete the manhole or inlet in accordance with the plans and these Specifications, including backfill and cleaning of all debris from the bottom of the manhole or inlet.
- J. Inlet Units.** Install cast iron or steel inlet units in conjunction with the construction of concrete curb and gutter. Set the inlet units securely in position before placing concrete for curb and gutter. Form openings for the inlets and recesses in curb and gutter as shown on the plans. Place and thoroughly consolidate concrete for curb and gutter adjacent to inlets and around the inlet castings and formed openings and recesses without displacing the inlet units.

- 465.4 Measurement.** All manholes and inlets satisfactorily completed in accordance with the plans and specifications will be measured by each manhole or inlet, complete, or by each manhole or inlet completed to the stage of construction required by the plans.
- 465.5 Payment.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for as follows:
- A. Complete Manholes.** Payment for complete manholes will be made at the unit price bid for “Manhole (Complete)” of the type specified.
 - B. Complete Inlets.** Payment for inlets will be made at the unit price bid for “Inlet (Complete),” of the type specified.
 - C. Manholes Stage I.** Payment for Manholes, Stage I, will be made at the unit price bid for each “Manhole (Stage I)” of the type specified.
 - D. Manholes Stage II.** Payment for Manholes, Stage II, will be made at the unit price bid for each “Manhole (Stage II)” of the type specified.
 - E. Inlets Stage I.** Payment for Inlets, Stage I, will be made at the unit price bid for each “Inlet (Stage I)” of the type specified.
 - F. Inlets Stage II.** Payment for Inlets, Stage II, will be made at the unit price bid for each “Inlet (Stage II)” of the type specified.

These price are full compensation for concrete, reinforcing steel, mortar, frames, grates, rings and covers, excavation, and backfill and for all other materials, tools, equipment, labor, and incidentals

2004 Specifications

SPECIAL PROVISION

500---011

Mobilization

For this project, Item 500, "Mobilization," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 500.1. Description is supplemented by the following:

Work for this Item includes submissions required by the Contract.

Article 500.3. Payment, Section A is voided and replaced by the following:

A. Payment will be made upon presentation of a paid invoice for the payment or performance bonds and required insurance. The combined payment for bonds and insurance will be no more than 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less. However, payment will be made for the actual cost of the paid invoice when the combined payment for bonds and insurance exceeds 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less.

Article 500.3. Payment, Section F is voided and replaced by the following:

F. Upon final acceptance, 97% of the mobilization lump sum bid will be paid. Previous payments under this Item will be deducted from this amount.

Article 500.3. Payment is supplemented by the following:

G. Payment for the remainder of the lump sum bid for "Mobilization" will be made after all submittals are received, final quantities have been determined and when any separate vegetative establishment and maintenance, test and performance periods provided for in the Contract have been successfully completed.

2004 Specifications

SPECIAL PROVISION

502---033

Barricades, Signs, and Traffic Handling

For this project, Item 502, "Barricades, Signs, and Traffic Handling," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 502.4. Payment, Section C. Maximum Total Payment Prior to Acceptance is voided and replaced by the following:

C. Maximum Total Payment Prior to Acceptance. The total payment for this Item will not exceed 10% of the total Contract amount before final acceptance in accordance with Article 5.8, "Final Acceptance." The remaining balance will be paid in accordance with Section 502.4.E, "Balance Due."

2004 Specifications

SPECIAL PROVISION

530---006

Intersections, Driveways, and Turnouts

For this project, Item 530, "Intersections, Driveways, and Turnouts," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 530.5. Payment. The first paragraph is voided and replaced by the following:

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Intersections," "Driveways," "Turnouts," "Intersections, Driveways, and Turnouts," or "Driveways and Turnouts" of the surface specified.

2004 Specifications

SPECIAL PROVISION

560---001

Mailbox Assemblies

For this project, Item 560, "Mailbox Assemblies," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 560.5. Payment is voided and replaced by the following:

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Mailbox Installation (Single)," of the type specified, "Mailbox Installation (Double)," of the type specified, or "Mailbox Installation (Multiple)," of the type specified. This price is full compensation for installing mailboxes and reflectors in permanent locations, materials, equipment, labor, tools, and incidentals. Removing existing and temporary mailbox assemblies and installing and moving temporary mailbox assemblies will not be paid for directly, but will be subsidiary to pertinent Items.

2004 Specifications

SPECIAL PROVISION

620---001

Electrical Conductors

For this project, Item 620, "Electrical Conductors," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 620.2 Materials. The fourth and fifth paragraphs are void and replaced by the following:

Use white insulation for grounded (neutral) conductors, except that grounded conductors AWG No. 4 and larger may be black with white tape marking at every accessible location. Do not use white insulation or marking for any other conductor except control wiring specifically shown on the plans.

Ensure that insulated grounding conductors are green except that insulated grounding conductors AWG No. 4 and larger may be black with green tape marking at every accessible location. Do not use green insulation or marking for any other conductor except control wiring specifically shown on the plans.

2004 Specifications

SPECIAL PROVISION

628---003

Electrical Services

For this project, Item 628, "Electrical Services," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 628.5. Payment, A. Installation is voided and replaced by the following:

A. Installation. Except as provided for in the following paragraph, this price is full compensation for paying all fees, permits, and other costs; making arrangements with the utility company for all work and materials provided by the utility company; furnishing, installing, and connecting all components including poles, service supports, foundations, anchor bolts, riprap, enclosures, switches, breakers, conduit (from the service equipment including the elbow below ground), fittings, conductors (from the service equipment including the elbow below ground), brackets, bolts, hangers, and hardware; and equipment, labor, tools, and incidentals.

Costs for utility-owned power line extensions, connection charges, meter charges, and other charges will be paid for by the Department. The Department will reimburse the contractor the amount billed by the utility plus an additional 5% of the invoice cost will be paid for labor, equipment, administrative costs, superintendence, and profit.

2004 Specifications

SPECIAL PROVISION**672---034****Raised Pavement Markers**

For this project, Item 672, "Raised Pavement Markers," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 672.2. Materials, Section B. Adhesives is supplemented by the following:

- The Contractor may propose alternate adhesive materials for consideration and approval by the Engineer.

Article 672.3. Construction. The sixth paragraph is voided and replaced by the following:

Use the following adhesive materials for placement jiggle bar tile, reflectorized pavement markers, and traffic buttons unless otherwise shown on the plans:

- standard or flexible bituminous adhesive for applications on bituminous pavements.
- epoxy adhesive or flexible bituminous adhesive for applications on hydraulic cement concrete pavements.

Use epoxy adhesive for plowable reflectorized pavement markers.

Article 672.3. Construction is supplemented by the following:

Provide a 30-day performance period that begins the day following written acceptance for each separate location. The date of written acceptance will be the last calendar day of each month for the RPMs installed that month for the completed separate project locations. This written acceptance does not constitute final acceptance.

Replace all missing, broken or non-reflective RPMs. Visual evaluations will be used for these determinations. Upon request, the Engineer will allow a Contractor representative to accompany the Engineer on these evaluations.

The Engineer may exclude RPMs from the replacement provisions of the performance, provided the Engineer determines that the failure is a result of causes other than defective material or inadequate installation procedures. Examples of outside causes are extreme wear at intersections, damage by snow or ice removal, and pavement failure.

Replace all missing or non-reflective RPMs identified during the performance period within 30 days after notification. The end of the performance period does not relieve the Contractor from the performance deficiencies requiring corrective action identified during the performance period.

Article 672.5. Payment is supplemented by the following:

No additional payment will be made for replacement of RPMs failing to meet the performance requirements.

2004 Specifications

SPECIAL PROVISION

682---003

Vehicle and Pedestrian Signal Heads

For this project, Item 682, "Vehicle and Pedestrian Signal Heads," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 682.2. Materials, Section B. General. The first and second paragraphs are voided and replaced by the following:

Provide vehicle signal heads in accordance with DMS-11120, "Vehicle Signal Heads" and DMS-11121, "12 Inch LED Traffic Signal Lamp Unit." Provide vehicle signal heads from manufacturers prequalified by the Department. The Traffic Operations Division maintains a list of prequalified vehicle signal head manufacturers.

Provide pedestrian signal heads in accordance with DMS-11130, "Pedestrian Signal Heads," and DMS-11131, "Pedestrian LED Countdown Signal Modules." Provide pedestrian signal heads from manufacturers pre-qualified by the Department. The Traffic Operations Division maintains a list of pre-qualified pedestrian signal head manufacturers.

2004 Specifications

**SPECIAL PROVISION
TO
SPECIAL SPECIFICATION
1122--001**

Temporary Erosion, Sedimentation, and Environmental Controls

For this project, Special Specification Item 1122, "Temporary Erosion, Sedimentation, and Environmental Controls" is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 3.C. Training is supplemented by the following:

The Environmental Management System (EMS) eLearning Courses and Department's EMS Policy Statement can be found at http://txdot.gov/business/ems_courses.htm. The following training has been developed in compliance with the Department's EMS program.

All Contractor and subcontractor employee's involved in the earthwork activities, small or large structures, storm water control measures, and seeding activities must complete the following training located at to <https://www.txdot.gov/inside-txdot/division/environmental/programs/ems-courses.html>. Training is provided by the Department at no cost to the Contractor and is valid for 3 years from the date of completion. The Engineer may require training at a frequency less than 3 years based on environmental needs.

- "Environmental Management System: Awareness Training for the Contractor (English and Spanish) (Approximate running time 20 minutes)," and
- "Storm Water: Environmental Requirements During Construction (English and Spanish) (Approximate running time 20 minutes)."

The CRPe, alternate CRPe designated for emergencies, Contractor's superintendent, and Contractor and subcontractor lead personnel involved in SWP3 activities must enroll and complete the training located at <http://www.dedtraining.com/>. Training is provided by a third party and is valid for 3 years from the date shown on the Certificate of Completion. Coordinate enrollment through the third party and pay associated fees for the following training:

- "Revegetation During Construction,"
- "Construction General Permit Compliance," and
- "Construction Stage Gate Checklist (CSGC)."

Training and associated fees will not be measured or paid for directly but are considered subsidiary to this Item.

1122--001
08-12

2004 Specifications

**SPECIAL PROVISION
TO
SPECIAL SPECIFICATION
6266--017**

Video Imaging Vehicle Detection System

For this project, Special Specification Item 6266, "Video Imaging Vehicle Detection System," is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 1. Description. The second paragraph is voided and replaced by the following:

A VIVDS configuration for a single intersection will consist of variable focal length cameras, VIVDS card rack processor system, and all associated equipment required to setup and operate in a field environment including a video monitor and/or laptop (if required), connectors and camera mounting hardware.

Article 6. Camera Assembly, Section B. Camera and Lens Assembly. Section 2 is voided and replaced by the following:

2. The enclosure must allow the camera to operate satisfactorily over an ambient temperature range from -30°F to +140°F while exposed to precipitation as well as direct sunlight.

**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

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

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

ATTACHMENTS

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

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.

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).

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 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.

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.

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.

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.

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).

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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.

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.

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.