

CITY OF NEW BRAUNFELS



PROJECT MANUAL for

Common Street Pedestrian Improvements

Solicitation # **RFB 24-018**

Date Issued:

April 19, 2024

RESPONSES MUST BE RECEIVED **NO LATER THAN:**
3:00 P.M. CDT May 16, 2024

Bid Bond:	Performance Bond:	Payment Bond:
5%	100%	100%

Location: New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130

New Braunfels Purchasing Department:

Barbara Coleman

Phone: 830-221-4389

Email: bcoleman@newbraunfels.gov

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Common Street Pedestrian Improvements
CSJ 0915-17-076

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SECTION B

INVITATION TO BID

SOLICITATION AND OFFER ACKNOWLEDGMENT

GENERAL REQUIREMENTS AND COVENANTS 1L THROUGH 9L

SPECIAL PROVISIONS – FEDERAL

SPECIAL PROVISIONS TO THE BID

INVITATION TO BID

Sealed Bids will be accepted for the Common Street Pedestrian Improvements Project. This is a FHWA funded project supported by the Texas Department of Transportation (TxDOT).

The City of New Braunfels (the "City") is seeking sealed bids from contractors to provide Construction services for a FHWA funded project: Common Street Pedestrian Improvements.

Responses are solicited for this service in accordance with the terms, conditions, and instructions set forth in this Bid.

Owner: City of New Braunfels
550 Landa Street
New Braunfels, Texas 78260

Purchasing Contact: Barbara Coleman, Purchasing Manager,
bcoleman@newbraunfels.gov

City Project Manager: Nathan Garza

Engineer: The Goodman Corporation
3200 Travis Street, suite 200
Houston, TX 77006
Ashish Ghosh, P.E., Principal Engineer

Est. Budget: \$1,583,000.00

Bid-Opening Date and Time: The City will receive responses at the office of the City Secretary, 550 Landa Street, New Braunfels, Texas 78130,
Until 3:00 p.m. on May 16, 2024.

Bid Responses will be publicly opened and read aloud virtually directly after bids are due.

[Join the meeting at this link](#)

Meeting ID: 299 158 041 79 | Passcode: BGDYrk

Dial-in by phone

[+1 346-352-9877](tel:+13463529877), [105916536#](tel:+1591653636) United States, Houston | Phone conference ID: 105 916 536#

Late responses will not be accepted.

Each firm is responsible for ensuring responses to this Bid are complete and have been delivered by date, time and location specified. Any Bid received after the date or time set for proposal opening will be returned unopened. If Bids are sent by mail, the Proposer shall be responsible for actual delivery of the proposal before the advertised date and hour for opening of proposals. If mail is delayed either in the postal service or in the internal mail system of the City of New Braunfels beyond the date and hour set for the opening, proposals thus delayed will not be considered and will be returned unopened.

The guidelines, as well as Bid documents may be obtained at:

- BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <https://www.nbtexas.org/2694/Solicitations>

Pre-bid Conference: There will be a non-mandatory pre-bid conference hosted virtually at **10:00 a.m. on May 3, 2024**, at New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130 and Microsoft Teams:

[Join the meeting at this link](#)

Meeting ID: 224 493 295 645: Passcode: M6kfGw

Dial-in by phone: [+1 346-352-9877](tel:+13463529877), [548429628#](tel:+1548429628) United States, Houston | Phone conf. ID: 548 429 628#

The purpose of the meeting will be to discuss this solicitation and answer questions. Attendance is not mandatory but, due to the complexity of the project, it is strongly recommended.

Pre-Proposal conference minutes and any addendum may be downloaded at the BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City of New Braunfels' website, <https://newbraunfels.gov/2694/Solicitations>.

SUBMISSION OF BID

Companies responding to the Bid must follow the instructions below.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that Bids be submitted with **1 original master (marked original) and one (1) electronic copy on USB. The following items need to be completed and returned with your Bid submission and shall be tabbed and labeled as indicated for consistency.**

- TAB 1 –** Solicitation and Offer Form; completed and signed.
- TAB 1 –** Acknowledgment of Addenda, if applicable.
- TAB 2 –** Cover Letter: Name and address of the Proposer, as well as a brief description of the firm and its history.
- TAB 3 –** Bid Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal - (Exhibit 10).
- TAB 4 –** Bid Form (Exhibit 1)
- TAB 5 –** Plan and Schedule as required in Exhibit 4
- TAB 6 -** Qualifications of Proposer, Section Qualifications of Proposer (Exhibit 2)
- TAB 6 -** Contractors Certifications (Exhibit 4)
- TAB 7 -** DBE Certificate of DBE Goal Attainment – Section D, pg. 155
- TAB 7 -** DBE -Summary of Proposed Participation Goals - %, pg. 156
- TAB 7 -** DBE- TxDOT Form SMS 4904, pg. 172
- TAB 8 –** Acceptable Documentation
 - One copy of Certificate of Insurability completed and signed.
 - Disclosure of Lobbying Activities (Exhibit 3)
 - Certificate of Non-Suspension or Debarment (Exhibit 6)
 - Child Support (Exhibit 7)
 - Conflict of Interest (Exhibit 8)
 - TxDOT Form 1560 Certificate of Insurance (Exhibit 13)
 - TxDOT Form 1818 Material Statement (Exhibit 14)

Required after Selection and before contract award –

- DBE Commitments – Section D 148
- Certificate of Interested Parties Form 1295 (Exhibit 11)
- Performance and Payment Bonds (Forms Exhibit 10)
- Certificate of Insurance
- LGPP Contract

Selection Criteria: The Contract is to be awarded on the basis of **Lowest Responsible and Responsive Bidder**. In identifying these criteria the City will consider: 1) lowest total bid price for all work listed and specifically requested, including but not limited to: Base Bid, Extra Work items and selected Alternates. The City reserves the right to award a contract to the low Bidder as determined by "Tabulating Bids." The City will award a Contract to the second lowest Bidder when the following requirements have been met: 1) The low Bidder withdraws its bid. 2) The low Bidder fails to enter into a contract with the Owner after Award. 3) The Low Bidder's unit bid prices are unreasonable 4) The Low Bidder is disqualified. 5) The Low Bidder is non-responsive.

Refer to 2L Instructions to Bidders for bidding details and Exhibit 4 Contractors Qualifications.

RETAINAGE: The owner will retain five percent (5%) retainage of each application for Payment from the Contractor. Upon Final Completion of the work, the retainage shall be released.

BID BOND: All Bids shall be accompanied by a proposal guaranty in an amount of not less than five percent (5%) of the total Bid. The only acceptable Bid guaranty will be a Bid bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.

DBE COMMITMENTS: Per Special Provisions SP000 3941-2.3.3 Apparent Low Bidder. The apparent low bidder must submit DBE commitments to satisfy the DBE goal for this project of 6% or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, no later than 5 calendar days after bid opening.

Submit to Barbara Coleman, Purchasing Manager: bcoleman@newbraunfels.gov

PAYMENT BOND AND PERFORMANCE BOND: Contracts greater than \$25,000 require a Payment Bond and contracts greater than \$100,000 require Performance Bonds.

A Payment Bond and Performance Bond, each shall be issued in equal to the Contract Amount as security for the faithful performance or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by the City pursuant to applicable law.

INSURANCE AND LIABILITY COVERAGE: During the period of this contract, Contractor shall maintain at his expense, insurance with limits not less than those prescribed in the Contract Documents.

PREVAILING WAGE RATES are the minimums that must be paid in compliance with applicable laws of the State of Texas. The prevailing wage rate is included in this documentation for reference.

EQUAL OPPORTUNITY: All responsible bidders will receive consideration for award of contract without regard to race, color, religion, sex, or national origin.

NONDISCRIMINATION: The City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

MISCELLANEOUS: The Owner reserves the right to reject any and all bids if the bids do not meet the requirements within the invitation for bid process.

No Bid shall be withdrawn within 120 days after the bid opening without the specific written consent of the Owner.

Bidders submitting a bid are encouraged to visit the proposed site of work.

This project does not apply local preference for resident bidders and does not apply reciprocity statutes for the state of Texas for non-resident bidders.



SOLICITATION AND OFFER

City of New Braunfels
Purchasing
550 Landa Street
New Braunfels, Texas 78130

Solicitation Number: CSP 24-018
RFB 24-018 Common Street Pedestrian
Improvements
CSJ 0915-17-076

- ☒ Invitation for Bid (IFB)
☐ Competitive Sealed Proposal (CSP)

Date Issued:
April 19, 2024

SOLICITATION

A non-mandatory Pre-Bid Conference will be hosted remotely on **May 3, 2024 at 10:00 am (CDT)**. See page 5 for virtual link.
Questions may be submitted until close of business day on **May 6, 2024, 5:00 P.M. (CDT)**.
Respondents must submit bids in a signed original, with 1 hard copy, and 1 in digital format (.pdf File on USB Thumb Drive).
Bids will be **received and read aloud** at the New Braunfels City Hall, City Secretary Office at the address shown above until: **3:00 P.M. (CDT), May 16, 2024. See page 5 for virtual link.**
Bids received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:
(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

Purchasing Representative
Barbara Coleman
Purchasing Manager

Email : BCoeman@newbraunfels.gov
Phone : (830) 221-4389
Fax: (830) 608-2112

5% Proposal Bond Required:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	(If YES, refer to information in Section 5.)
100% Payment Bond Required:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	(If YES, refer to information in Section 5.)
100% Performance Bond Required:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	(If YES, refer to information in Section 5.)

Bidder Certification

By signing the proposal, the bidder certifies:

- The only persons or parties interested in this proposal are those named, and the bidder has not directly or indirectly participated in collusion, entered into an agreement or otherwise taken any action in restraint of free competitive bidding in connection with the above captioned project.
- In the event of the award of a contract, the organization represented will secure bonds for the full amount of the contract.
- The signatory represents and warrants that they are an authorized signatory for the organization for which the bid is submitted, and they have full and complete authority to submit this bid on behalf of their firm.
- The certifications and representations contained in the proposal are true and accurate and the bidder intends the proposal to be taken as a genuine government record.
- The bidder is TxDOT prequalified

OFFER

In compliance with the above, the undersigned offers and agrees to furnish any or all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein.

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.
SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND ALL REQUESTED COPIES SUBMITTED.

Name And Address of Proposer:	Name and Title of Person Authorized to Sign Offer:
	E-Mail Address: _____
	Telephone Number: _____

Signature: _____ **Date:** _____

Name, Address, E-mail Address, and
Telephone Number of Person authorized to
conduct negotiations on behalf of Proposer.
(Applies to Request for Proposal only.)

SECTION B,

CONTINUED

GENERAL REQUIREMENTS AND COVENANTS 1L THROUGH 9L

SPECIAL PROVISIONS – FEDERAL

SPECIAL PROVISIONS TO THE BID

Introduction

Local Government General Requirements

For all projects with State or Federal funds, and/or all projects on the State Highway System regardless of funding source, a Local Government must either adopt the latest TxDOT Standard Specifications, Special Specifications, and required Special Provisions or request TxDOT written approval of alternate, equivalent specifications. TxDOT's *"2014 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges"* are the latest TxDOT Standard Specifications. These "General Requirements" along with additional requirements specified by the particular local government, are intended as a template for Items 1-9 in TxDOT's Standard Specifications on projects let by a local government that is on the State Highway System or includes reimbursement to the local government using FHWA or TxDOT funds.

This document is intended to be used as a template that allows local governments to modify Items 1-9 to meet their particular needs while assuring that all local, state, and federal statutory requirements are addressed. As this document modifies a TxDOT publication, there may be a question about terminology. In general, the "Owner" or the "Engineer" references the local government or its representatives (Consulting Engineers, etc.). Reference to "Department" or "Engineer" in the construction and maintenance specifications refers to the local government, except when it is referencing a TxDOT specification, manual, material specification, Material Producers List or test method.

Foreword

OUTLINE OF SPECIFICATIONS

Each specification is outlined by articles and sections. The basic articles required for a specification are:

1. DESCRIPTION
2. MATERIALS
3. EQUIPMENT
4. CONSTRUCTION OR WORK METHODS
5. MEASUREMENT
6. PAYMENT

Some articles are not used in every item. Measurement and Payment articles are combined when the work described is subsidiary to bid items of the Contract.

HIERARCHY OF ORGANIZATIONAL ELEMENTS

Here "XXX" represents the item number. The hierarchy of organizational elements available below the item level is as follows:

XXX.1., Article
XXX.1.1., Section
XXX.1.1.1., Section
XXX.1.1.1.1., Section
XXX.1.1.1.1.1., Section
XXX.1.1.1.1.1.1., Section

The term section is used for all breaks below the article.

Items 1L–9L

Local Government General Requirements and Covenants

Item 1L

Abbreviations and Definitions



1. APPLICABILITY

Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

2. ABBREVIATIONS

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standard Committee, Inc.
AMRL	AASHTO Materials Reference Laboratory
ANLA	American Nursery and Landscape Association
ANSI	American National Standards Institute
APA	The Engineered Wood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASBI	American Segmental Bridge Institute
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWC	American Wood Council
AWG	American Wire Gage
AWPA	American Wood Protection Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BMP	Best Management Practices
CFR	Code of Federal Regulations
CMP	Corrugated Metal Pipe
COE	U.S. Army Corps of Engineers
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DMS	Departmental Material Specification
EIA	Electronic Industries Alliance
EPA	United States Environmental Protection Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards (General Services Administration)
GSA	United States General Services Administration
HUB	Historically Underutilized Business

ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America
IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
ITS	Intelligent Transportation System
ITE	Institute of Transportation Engineers
LG	Local Government
LRFD	Load and Resistance Factor Design
MASH	Manual for Assessing Safety Hardware
MPL	Material Producer List (TxDOT document)
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report (TxDOT form)
NEC	National Electrical Code (Published by NFPA)
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NRM	Nonhazardous Recyclable Material
NRMCA	National Ready Mixed Concrete Association
NSBA	National Steel Bridge Alliance
NTPEP	National Transportation Product Evaluation Program
OSHA	Occupational Safety & Health Administration, U.S. Department of Labor
PCA	Portland Cement Association
PCI	Precast/Prestressed Concrete Institute
PE	Professional Engineer
PPI	Plastics Pipe Institute
PS&E	Plans, Specifications, and Estimates
PSL	Project-Specific Location
PTI	Post-Tension Institute
QA	Quality Assurance
QC	Quality Control
RCP	Reinforced Concrete Pipe
RPLS	Registered Public Land Surveyor
RRC	Railroad Commission of Texas
SBE	Small Business Enterprise
SFPA	Southern Forest Products Association
SI	International System of Units
SPIB	Southern Pine Inspection Bureau
SSPC	The Society for Protective Coatings
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TGC	Texas Government Code
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
UL	Underwriters Laboratory, Inc.
USC	United States Code
WRI	Wire Reinforcement Institute
WWPA	Western Wood Products Association

3. DEFINITIONS

- 3.1. **Abrasive Blasting.** Spraying blasts of pressurized air combined with abrasive media.

- 3.2. **Actual Cost.** Contractor's actual cost to provide labor, material, equipment, and project overhead necessary for the work.
- 3.3. **Addendum.** Change in bid documents developed between advertising and bid submittal deadline.
- 3.4. **Additive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The additive alternate items include work that may be added to the base bid work.
- 3.5. **Deductive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The deductive alternate items include work that may be deducted from the base bid work.
- 3.6. **Advertisement.** The public announcement required by law inviting bids for work to be performed or materials to be furnished.
- 3.7. **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.
- 3.8. **Air Blasting.** Spraying blasts of pressurized air free of oil and moisture.
- 3.9. **Air Temperature.** The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.
- 3.10. **Anticipated Profit.** Profit for work not performed.
- 3.11. **Apparent Low Bidder.** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Owner.
- 3.12. **Architect of Record.** A person registered as an architect or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for the design or a significant portion of the design and performs certain Contract administration responsibilities as described in the Contract; or a firm employed by the Owner to provide professional architectural services.
- 3.13. **Arterial Highway.** A highway used primarily for through traffic and usually on a continuous route.
- 3.14. **Notice of Award.** The Owner's acceptance of a Contractor's bid for a proposed Contract that authorizes the Owner to enter into a Contract.
- 3.15. **Base Bid.** The total bid amount without additive alternates.
- 3.16. **Bid.** The offer from the Bidder for performing the work described in the bid documents, submitted on the prescribed bid form, considering addenda issued and giving unit bid prices for performing the work described in the bid documents.
- 3.17. **Bid Bond.** The security executed by the Contractor and the Surety furnished to the Owner to guarantee payment of liquidated damages if the Contractor fails to enter into an awarded Contract.

- 3.18. **Bid Documents.** The complete set of documents necessary for a Bidder to submit a bid. The documents may include plans, specifications, special specifications, special provisions, addenda, and the prescribed form a Bidder is to submit as the Bid. Other terms used may include general conditions, proposal, instructions to bidders, and construction specifications.
- 3.19. **Bid Error.** A mathematical mistake made by a Bidder in the unit price entered into the bid documents.
- 3.20. **Bidder.** An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.
- 3.21. **Blast Cleaning.** Using one of the blasting methods, including, but not limited to, water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water injected abrasive blasting, and brush blasting.
- 3.22. **Bridge.** A structure, including supports, erected over a depression or an obstruction (e.g., water, a highway, or a railway) having a roadway or track for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 ft. between faces of abutments, spring lines of arches, or extreme ends of the openings for multiple box culverts.
- 3.23. **Brush Blasting.** Sweeping lightly with an abrasive blast to remove loose material.
- 3.24. **Building Contract.** A Contract entered under State law for the construction or maintenance of an Owner building or appurtenance facilities. Building Contracts are considered to be construction Contracts.
- 3.25. **Certificate of Insurance.** A form approved by the Owner covering insurance requirements stated in the Contract.
- 3.26. **Change Order.** Written order to the Contractor detailing changes to the specified work, item quantities or any other modification to the Contract.
- 3.27. **Concrete Construction Joint.** A joint formed by placing plastic concrete in direct contact with concrete that has attained its initial set.
- 3.28. **Concrete Repair Manual.** TxDOT manual specifying methods and procedures for concrete repair as an extension of the standard specifications.
- 3.29. **ConcreteWorks®.** TxDOT-owned software for concrete heat analysis. Software is available on the TxDOT's website.
- 3.30. **Construction Contract.** A Contract entered under State law for the construction, reconstruction, or maintenance of a segment of the Owner's transportation system.
- 3.31. **Consultant.** The licensed professional engineer or engineering firm, or the architect or architectural firm, registered in the State of Texas and under Contract to the Owner to perform professional services. The consultant may be the Engineer or architect of record or may provide services through and be subcontracted to the Engineer or architect of record.
- 3.32. **Contract.** The agreement between the Owner and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.

- 3.33. **Contract Documents.** Elements of the Contract, including, but not limited to, the plans, specifications incorporated by reference, special provisions, special specifications, Contract bonds, change orders, addendums, and supplemental agreements.
- 3.34. **Contract Time.** The number of days specified for completion of the work, including authorized additional working days.
- 3.35. **Contractor.** The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Owner.
- 3.36. **Controlled Access Highway.** Any highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.
- 3.37. **Control of Access.** The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway is fully or partially controlled by public authority.
- 3.38. **Control Point.** An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.
- 3.39. **Cross-Sections.** Graphic representations of the original ground and the proposed facility, at right angles to the centerline or base line.
- 3.40. **Culvert.** Any buried structure providing an opening under a roadway for drainage or other purposes. Culverts may also be classified as bridges. (See Section 1.3.23., "Bridge.")
- 3.41. **Cycle.** The activity necessary for performing the specified work within the right of way project limits once.
- 3.42. **Daily Road-User Cost.** Damages based on the estimated daily cost of inconvenience to the traveling public resulting from the work.
- 3.43. **Date of Written Authorization.** Date of the written Notice to Proceed authorizing the Contractor to begin work.
- 3.44. **Debar (Debarment).** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a highway improvement Contract as defined in local, state, or federal law.
- 3.45. **Detour.** A temporary traffic route around a closed portion of a road.
- 3.46. **Department.** When used in the context of the party with whom the Contractor has a Construction Contract, Department refers to Owner. When used in other contexts such as technical specifications, refers to the Texas Department of Transportation.
- 3.47. **Departmental Material Specifications.** Reference specifications for various materials published by TxDOT's Construction Division with a DMS-XXXXX numbering system.
- 3.48. **Direct Traffic Culvert.** Concrete box culvert whose top slab is used as the final riding surface or is to have an overlay or other riding surface treatment.

- 3.49. **Disadvantaged Business Enterprise.** 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.
- 3.50. **Divided Highway.** A highway with separate roadways intended to move traffic in opposite directions.
- 3.51. **Easement.** A real property right acquired by one party to use land belonging to another party for a specified purpose.
- 3.52. **Engineer.** The Professional Engineer licensed in Texas who represents the interests of the Owner.
- 3.53. **Entity.** Political subdivision for which the project is designed and constructed. Either a Municipality (City) or a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an **Owner**.
- 3.54. **Expressway.** A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.
- 3.55. **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.
- 3.56. **Force Account.** Payment for directed work based on the actual cost of labor, equipment, and materials furnished with markups for project overhead and profit.
- 3.57. **Freeway.** An expressway with full control of access.
- 3.58. **Frontage Road.** A local street or road auxiliary to and located along an arterial highway for service to abutting property and adjacent areas and for control of access (sometimes known as a service road, access road, or insulator road).
- 3.59. **Hazardous Materials or Waste.** Hazardous materials or waste include, but are not limited to, explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.
- 3.60. **High-Pressure Water Blasting.** Water blasting with pressures between 5,000 and 10,000 psi.
- 3.61. **Highway, Street, or Road.** General terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way. Recommended usage in urban areas is highway or street; in rural areas, highway or road.
- 3.62. **Historically Underutilized Business.** A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit certified by the Texas Comptroller of Public Accounts, and 51% owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, or women, and have a proportionate interest and demonstrate active participation in the control, operation, and

management of the business' affairs. Individuals meeting the HUB definition are required to be residents of the State of Texas. Businesses that do not have their primary headquarters in the State of Texas are not eligible for HUB certification.

- 3.63. **Incentive/Disincentive Provisions.** An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion dates. The amount of the incentive/disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.
- 3.64. **Independent Assurance Tests.** Tests used to evaluate the sampling and testing techniques and equipment used in the acceptance program. The tests are performed by the Owner or the Owner's representative and are not used for acceptance purposes.
- 3.65. **Inspector.** The person assigned by the Owner to inspect any or all parts of the work and the materials used for compliance with the Contract.
- 3.66. **Intelligent Transportation System.** An integrated system that uses video and other electronic detection devices to monitor traffic flows.
- 3.67. **Intersection.** The general area where 2 or more highways, streets, or roads join or cross, including the roadway and roadside facilities for traffic movements within it.
- 3.68. **Island.** An area within a roadway from which vehicular traffic is intended to be excluded, together with any area at the approach occupied by protective deflecting or warning devices.
- 3.69. **Joint Venture.** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid form.
- 3.70. **Lane Rental.** A method to assess the Contractor daily or hourly rental fees for each lane, shoulder, or combination of lanes and shoulders taken out of service.
- 3.71. **Letting.** The receipt, opening, tabulation, and determination of the apparent low Bidder.
- 3.72. **Letting Official.** The Owner representative empowered by the Owner to officially receive bids and close the receipt of bids at a letting.
- 3.73. **Licensed Professional Engineer.** A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- 3.74. **Limits of Construction.** An area with established boundaries, identified within the highway right of way and easements, where the Contractor is permitted to perform the work.
- 3.75. **Local Street or Road.** A street or road primarily for access to residence, business, or other abutting property.
- 3.76. **Low-Pressure Water Blasting.** Water blasting with pressures between 3,000 and 5,000 psi.
- 3.77. **Major Item.** An item of work included in the Contract that has a total cost equal to or greater than 5% of the original Contract or \$100,000 whichever is less. A major item at the time of bid will remain a major item. An item not originally a major item does not become one through the course of the Contract.

- 3.78. **Manual of Testing Procedures.** Department manual outlining test methods and procedures maintained by the Materials and Tests Division.
- 3.79. **Material Producer List.** TxDOT-maintained list of approved products. Referenced as "Department's MPL".
- 3.80. **Materially Unbalanced Bid.** A bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Owner.
- 3.81. **Mathematically Unbalanced Bid.** A bid containing bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.
- 3.82. **Median.** The portion of a divided highway separating the traffic lanes in opposite directions.
- 3.83. **Milestone Date.** The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.
- 3.84. **Monolithic Concrete Placement.** The placement of plastic concrete in such manner and sequence to prevent a construction joint.
- 3.85. **National Holidays.** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, and December 24 or December 25.
- 3.86. **Nonhazardous Recyclable Material.** A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.
- 3.87. **Nonresident Bidder.** A Bidder whose principal place of business is not in Texas. This includes a Bidder whose ultimate parent company or majority owner does not have its principal place of business in Texas.
- 3.88. **Nonresponsive Bid.** A bid that does not meet the criteria for acceptance contained in the bid documents.
- 3.89. **Non-Site-Specific Contracts.** Contracts in which a geographic region is specified for the work and for which work orders, with or without plans, further detail the limits and work to be performed.
- 3.90. **Notice to Proceed,** Written notification to the Contractor authorizing work to begin.
- 3.91. **Notification.** Either written or oral instruction to the Contractor concerning the work. Voice mail is oral notification.
- 3.92. **Owner,** Political subdivision for whom the project is designed and constructed. Either a Municipality (City), a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an **Entity**.
- 3.93. **Pavement.** That part of the roadway having a constructed surface for the use of vehicular traffic.
- 3.94. **Pavement Structure.** Combination of surface course and base course placed on a subgrade to support the traffic load and distribute it to the roadbed.
- 3.94.1. **Surface Course.** Pavement structure layers designed to accommodate the traffic load. The top layer resists skidding, traffic abrasion, and the disintegrating effects of climate and is sometimes called the wearing course.

- 3.94.2. **Base Course.** One or more layers of specified material thickness placed on a subgrade to support a surface course.
- 3.94.3. **Subgrade.** The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.
- 3.94.4. **Subgrade Treatment.** Modifying or stabilizing material in the subgrade.
- 3.95. **Payment Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- 3.96. **Performance Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee the completion of the work in accordance with the terms of the Contract.
- 3.97. **Plans.** The approved drawings, including true reproductions of the drawings that show the location, character, dimensions, and details of the work and are a part of the Contract.
- 3.98. **Power of Attorney for Surety Bonds.** An instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- 3.99. **Qualification.** The process for determining a Contractor's eligibility to be awarded a construction contract
- 3.100. **Prequalification.** The process for determining a Contractor's eligibility to bid work.
- 3.101. **Prequalification Statement.** The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.
- 3.102. **Prequalified Contractor.** A contractor that is approved to bid on TxDOT contracts by satisfying their Prequalification Process.
- 3.103. **Post Qualification.** The owner will determine if contractors are qualified to bid on the project after bids are open. The bid documents will identify the minimum requirements that contractor must meet to be qualified for the project. Unqualified contractors' bids will be considered non-responsive and not accepted.
- 3.104. **Project-Specific Location.** A material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Contract.
- 3.105. **Proposal.** The offer from the Bidder submitted on the prescribed form, including addenda issued, giving unit bid prices for performing the work described in the plans and Specifications.
- 3.106. **Proposal Form.** The form printed and sent to the Bidder by the Owner or printed by the Bidder from the Owner's bidding system.
- 3.107. **Proposal Guaranty.** The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.
- 3.108. **Quality Assurance.** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- 3.109. **Quality Control.** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.

- 3.110. **Ramp.** A section of highway for the primary purpose of making connections with other highways.
- 3.111. **Referee Tests.** Tests requested to resolve differences between Contractor and Owner test results. The referee laboratory is the Owner's.
- 3.112. **Regular Item.** A bid item contained in the bid documents and not designated as an additive alternate or replacement alternate bid item.
- 3.113. **Rental Rate Blue Book for Construction Equipment.** Publication containing equipment rental rates.
- 3.114. **Replacement Alternate.** A bid item identified on the bid documents that a Bidder may substitute for a specific regular item of work.
- 3.115. **Responsive Bid.** A bid that meets all requirements of the advertisement and the bid documents for acceptance.
- 3.116. **Right of Way.** A general term denoting land or property devoted to transportation purposes.
- 3.117. **Roadbed.** The graded portion of a highway prepared as foundation for the pavement structure and shoulders. On divided highways, the depressed median type and the raised median type highways are considered to have 2 roadbeds. Highways with a flush median are considered to have 1 roadbed. Frontage roads are considered separate roadbeds.
- 3.118. **Road Master.** A railroad maintenance official in charge of a division of railway.
- 3.119. **Roadside.** The areas between the outside edges of the shoulders and the right of way boundaries. Unpaved median areas between inside shoulders of divided highways and areas within interchanges are included.
- 3.120. **Roadway.** The portion of the highway (including shoulders) used by the traveling public.
- 3.121. **Sandblasting, Dry.** Spraying blasts of pressurized air combined with sand.
- 3.122. **Sandblasting, Wet.** Spraying blasts of pressurized water combined with sand.
- 3.123. **Shoulder.** That portion of the roadway contiguous with the traffic lanes for accommodation of stopped vehicles for emergency use or for lateral support of base and surface courses.
- 3.124. **Shot Blasting.** Spraying blasts of pressurized air combined with metal shot.
- 3.125. **Sidewalk.** Portion of the right of way constructed exclusively for pedestrian use.
- 3.126. **Slurry Blasting.** Spraying blasts of pressurized air combined with a mixture of water and abrasive media.
- 3.127. **Special Provisions.** Additions or revisions to these standard specifications or special specifications.
- 3.128. **Special Specifications.** Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 3.129. **Specifications.** Directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract. References to DMSs,

ASTM or AASHTO specifications, or TxDOT bulletins and manuals, imply the latest standard or tentative standard in effect on the date of the bid. The Owner will consider incorporation of subsequent changes to these documents in accordance with Item 4L, "Scope of Work."

- 3.130. **Small Business Enterprise.** A firm (including affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 4 consecutive years.
- 3.131. **State.** The State of Texas.
- 3.132. **State Holiday.** A holiday authorized by the State Legislature excluding optional state holidays and not listed in Section 1L.3.85., "National Holidays." A list of state holidays can be found on the TxDOT's website.
- 3.133. **Station.** A unit of measurement consisting of 100 horizontal feet.
- 3.134. **Subcontract.** The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 3.135. **Subcontractor.** 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.
- 3.136. **Subsidiary.** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.
- 3.137. **Substructure.** The part of the structure below the bridge seats, but not including bearings, drilled shafts, or piling. Parapets, back walls, wing walls of the abutments, and drainage structures are considered parts of the substructure.
- 3.138. **Superintendent.** The representative of the Contractor who is available at all times and able to receive instructions from the Owner or authorized Owner representatives and to act for the Contractor.
- 3.139. **Superstructure.** The part of the structure above the bridge seats or above the springing lines of arches and including the bearings. Flatwork construction may be considered superstructure.
- 3.140. **Supplemental Agreement.** Written agreement entered into between the Contractor and the Owner and approved by the Surety, covering alterations and changes in the Contract. A supplemental agreement is used by the Owner whenever the modifications include assignment of the Contract from one party to another or other cases as desired by the Owner.
- 3.141. **Surety.** The corporate body or bodies authorized to do business in Texas bound with and for the Contractor for the faithful performance of the work covered by the Contract and for the payment for all labor and material supplied in the prosecution of the work.
- 3.142. **Surplus Materials.** Any debris or material related to the Contract but not incorporated into the work.
- 3.143. **Suspension.** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a contract

- 3.144. **Tex -XXX-X.** TxDOT material test methods found on TxDOT's website.
- 3.145. **Traffic Lane.** The strip of roadway intended to accommodate the forward movement of a single line of vehicles.
- 3.146. **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
- 3.147. **Truck Owner-Operator.** An individual who owns and operates 1 truck for hire.
- 3.148. **UT-Bridge.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.149. **UT-Lift.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.150. **Utility.** Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, heat, gas, oil, water, waste, or storm water that are not connected with the highway drainage, signal systems, or other products that directly or indirectly serve the public; the utility company.
- 3.151. **Verification Tests.** Tests used to verify accuracy of QC and QA and mixture design testing.
- 3.152. **Water-Abrasive Blasting.** Spraying blasts of pressurized water combined with abrasive media.
- 3.153. **Water Blasting.** Spraying blasts of pressurized water of at least 3,000 psi.
- 3.154. **Water-Injected Abrasive Blasting.** Abrasive blasting with water injected into the abrasive/air stream at the nozzle.
- 3.155. **Wholly-Owned Subsidiary.** A legal entity owned entirely by the Contractor or subcontractor.
- 3.156. **Work.** The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract.
- 3.157. **Written Notice.** Written notice is considered to have been duly given if delivered in person to the individual or member to whom it is intended or if sent by regular, registered, or certified mail and delivered to the last known business address; sent by facsimile to the last known phone number; or sent by e-mail to the last known address. The date of the letter will serve as the beginning day of notice. Unclaimed mail or failure to provide current mailing address will not be considered a failure to provide written notice.

Item 2L

Instructions to Bidders



1. INTRODUCTION

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be "the Contractor." The Owner's responsibilities are generally written in passive voice, indicative mood. Phrases such as "as approved," "unless otherwise approved," "upon approval," "as directed," "as verified," "as ordered," and "as determined" refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

2. ELIGIBILITY OF BIDDERS

Bidders on this project must be prequalified through TxDOT by meeting the requirements of the Confidential Questionnaire (CQ) or Bidder's Questionnaire (BQ) (select one). Refer to TxDOT's website for prequalification requirements. Assure prequalification documents are submitted to TxDOT at least 14 days before bid opening. Comply with all technical prequalification requirements in the bid documents.

Comply with City of New Braunfels qualification requirements listed in Section D, Exhibit 4. Contractor Qualifications.

3. ISSUING BID DOCUMENTS

Bid Documents may be obtained at:

- the BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <https://newbraunfels.gov/2694/Solicitations>

At the time Bid Documents are obtained, Bidder must provide a working e-mail address, so as to receive any addenda or clarification issued by the Owner.

The Owner will not issue bid documents if one or more of the following apply:

- the Bidder is suspended or debarred by the Department or federal agency
- the Bidder has not fulfilled the requirements for prequalification
- the Bidder is prohibited from rebidding a specific project due to a bid error on the original bid documents,
- the Bidder failed to enter into a Contract on the original award,
- the Bidder was defaulted or terminated on the original Contract, unless the Owner terminated for convenience, or
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Owner to participate in the preparation of the plans or specifications on which the bid or Contract is based.

4. INTERPRETING ESTIMATED QUANTITIES

The quantities listed in the bid documents are approximate and will be used for the comparison of bids. Payments will be made for actual quantities of work performed in accordance with the Contract.

5. EXAMINING DOCUMENTS AND WORK LOCATIONS

Examine the bid documents and specified work locations before submitting a bid for the work. 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 the use of the Owner in the preparation of plans. This information is provided for the Bidder's information only and the Owner 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 bid documents given during the bidding process are not binding. Only requirements included in the bid documents and Owner-issued addenda are binding. Request explanations of documents at least five (5) days prior to the bid opening.

Immediately notify the Owner of any error, omission, or ambiguity discovered in any part of the bid documents. The Owner will issue addenda when appropriate.

6. PREPARING THE BID

Prepare the proposal form furnished by the Owner.

Specify a unit price in dollars and cents for each regular item, additive alternate item, deductive alternate item or replacement alternate 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.

The Owner will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is considered incomplete:

- the proposal form was not signed,
- all certifications were not acknowledged,
- a regular item, additive alternate item or deductive alternate item is left blank,
- a regular item and the corresponding replacement alternate item are left blank,
- the proposal form submitted had the incorrect number of items, or
- all addenda were not acknowledged.

7. NONRESPONSIVE BID

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- The bid was not in the hands of the Letting Official at the time and location specified in the advertisement.
- A bid was submitted for the same project by a Bidder or Bidders and one or more of its partners or affiliates.
- The Bidder was not authorized to receive a proposal form under Article 2L.3, "Issuing Bid Documents",
- The Bidder failed to acknowledge receipt of all addenda issued.
- The bid form was signed by a person who was not authorized to bind the Bidder or Bidders.
- The bid guaranty did not comply with the requirements contained in this Item.

- The bid was in a form other than the official proposal form issued by the Owner.
- The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid documents.
- The Bidder bid more than the maximum or less than the minimum number of allowable working days when working days was an item.
- The Bidder did not attend a specified mandatory pre-bid conference.
- The Bidder did not meet the requirements of the technical qualification.
- Failure to comply with Contractor's Certifications: Non-engagement in corrupt, fraudulent, collusive, or coercive practices, Anti-Lobbying, Non-Collusion
- The bidder is not prequalified by TxDOT.
- The bidder does not meet the Owner's requirements of the technical qualification.
- The bidder did not complete the Contractor's Qualification Form
- Failure to comply with Requirement for Disclosure of Conflict of Interest
- The Bidder did not include a signed State of Texas Child Support Business Ownership Form.
- The Bidder did not include or meet required DBE Compliance Plan
- Bids received from a Bidder who has been debarred or suspended by owner.

8. SUBMITTAL OF BIDS

8.1. **Electronic Bids.** Not used.

8.1.1. **Bid Form.** *The city is not accepting electronic responses.*

Use the electronic proposal form in the Owner's bidding system. When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda listed in the Owner's bidding system.

The electronic proposal form may not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.

8.1.2. **Bid Guaranty.** Provide a bid guaranty in the amount indicated on the proposal form. Use an electronic bid bond. Guaranty checks or printed bid bonds will not be accepted.

Use the most current version of the electronic bond accepted by the Owner. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into the Owner's bidding system.

It is the Bidder's responsibility to ensure the electronic bid bond is issued in the name or names of the Bidder or Bidders.

8.1.3. **Submittal of Bid.** Submit the bid using the Owner's bidding system.

8.1.4. **Revising the Bid Form.** Make desired changes as allowed by the Owner's bidding system up until the time and date set for the opening of bids. The last bid submitted will be used for tabulation purposes.

8.1.5. **Withdrawing a Bid.** Submit an electronic or written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. An electronic request must be made using the Owner's bidding system.

A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

8.2. **Printed Bid.**

8.2.1. **Bid Form.** Mark all entries in ink. As an alternative to hand writing the unit prices in the proposal form, submit a typed proposal form. A typed proposal form must contain the information in the format shown in the bid form.

When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. 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 proposal form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint venture, the person signing the proposal form must be authorized to bind all joint venture participants.

If a proposal form contains both regular items for domestic steel or iron materials and replacement alternate items for foreign steel or iron materials, the Bidder must either:

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

8.2.2. **Bid Bond.** Provide a bid guaranty/bid bond in the amount indicated on the bid documents. Use the bid bond form provided by the Owner. Submit the bid bond with the powers of attorney attached and in the amount specified. The bond must be dated on or before the date of the bid opening, bear the impressed seal and the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety, and be signed by the venture Bidders, each of the Bidders may submit a separate bid bond completed as outlined in this section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with State Law.

8.2.3. **Guaranty Check.** Not used

8.2.4. **Submittal of Bid.**

Companies responding to the IFB must follow the instructions below.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that bids be submitted with **1 original master (marked original), and 1 in digital format (.pdf File on USB Thumb Drive).** Responses shall be tabbed and labeled as indicated for consistency.

- TAB 1 – Solicitation and Offer Form; completed and signed.
- TAB 1 – Acknowledgment of Addenda, if applicable.
- TAB 2 – Cover Letter: Name and address of the Proposer, as well as a brief description of the firm and its history.
- TAB 3 – Bid Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal - (Exhibit 10).
- TAB 4 – Bid Form (Exhibit 1)
- TAB 5 – Plan and Schedule as required in Exhibit 4
- TAB 6 - Qualifications of Proposer, Section Qualifications of Proposer (Exhibit 2)
- TAB 6 - Contractors Certifications (Exhibit 4)

- TAB 7 - DBE Certificate of DBE Goal Attainment – Section D, pg. 154
TAB 7 - DBE -Summary of Proposed Participation Goals - %, pg. 155
TAB 7 - DBE- TxDOT Form SMS 4904, pg. 171
TAB 8 – Acceptable Documentation
- One copy of Certificate of Insurability completed and signed.
 - Disclosure of Lobbying Activities (Exhibit 3)
 - Certificate of Non-Suspension or Debarment (Exhibit 6)
 - Child Support (Exhibit 7)
 - Conflict of Interest (Exhibit 8)
 - TxDOT Form 1560 Certificate of Insurance (Exhibit 13)
 - TxDOT Form 1818 Material Statement (Exhibit 14)

Required after Selection and before contract award –

- DBE Commitments – Section D 148
- Certificate of Interested Parties Form 1295 (Exhibit 11)
- Performance and Payment Bonds (Forms Exhibit 10)
- Certificate of Insurance
- LGPP Contract

Bid shall include all specified items in this section and be placed in an envelope, sealed and clearly identified on outside as a Bid to Owner, with Bidder's name and address, and project name. Bid may be mailed or delivered (in person or by Express Mail or delivery service) to:

<u>Deliver</u>	Purchasing Manager City of New Braunfels 550 Landa Street New Braunfels, TX 78130	IFB – 24-018 Project Name: Common Street Pedestrian Improvements Due: May 16, 2024
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When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement or in the bid documents. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.

- 8.2.5. **Revising the Proposal Form.** Make desired changes to the proposal form in ink and submit the bid to the Letting Official. The Owner will not make revisions to a bid on behalf of a Bidder.
- 8.2.6. **Withdrawing a Bid.** Submit a written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.
- 8.2.8 **General Contractor Registration** – Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department, Building Division on the City's website <https://newbraunfels.gov/>. In addition to topics such as permitting and fees, et cetera, the

"Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060.

9. **OPENING AND READING OF BIDS**

At the time, date, and location specified in the official advertisement, the Owner will publicly open and read bids.

10. **TABULATING BIDS**

10.1. **Official Total Bid Amount.** The Owner will sum the products of the quantities and the unit prices bid in the proposal form to determine the official total bid amount, except as provided in Section 2L.11., "Consideration of Unit Prices." 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.

10.2. **Consideration of Bid Format.** When a Bidder submits both an electronic bid and a printed bid that is responsive, the unit bid prices in the printed bid will be used to determine the total bid amount. If the printed bid is incomplete or nonresponsive, the electronic bid will be used in the tabulation of the total bid amount.

If a Bidder submits 2 or more printed bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

10.3. **Rounding of Unit Prices.** The Owner 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.

10.4. **Interpretation of Unit Prices.** The Owner will make a documented determination of the unit bid price if a unit bid price is illegible or conflicting in the case of replacement alternate items. The Owner's determination will be final.

10.5. **Consideration of Unit Prices.**

10.5.1. **Additive Alternate Items.** The Owner will sum the products of the quantities and the unit prices for the regular items in the proposal form to determine the total bid amount for the base bid. The official total bid amount will be determined by the summation of the base bid plus a pre-determined order of additive alternate items. An estimate of the budgeted amount may be shown on the plans.

The Contract will identify the base bid work and additive alternate work to be performed. The Owner makes no guarantee that the additive alternate work will be required.

10.5.2. **A + B Bidding.** The official total bid amount will be determined by the summation of the Contract amount and the time element. The Owner will use the following formula to make the calculation:

$$A + B1 + B2 + BX + \dots + BT$$

The Contract amount, equal to A in the formula, is determined by the summation of the products of the approximate quantities shown in the bid and the unit bid prices bid. The time element, equal to B1, B2, BX

(when phases are included as bid components), and BT (substantial completion of the project when included as a bid component), of the bid is determined by multiplying the number of working days bid to substantially complete the project, or phases, by the daily road-user cost (RUC) provided on the bid documents. When partial days are bid they will be rounded up to the nearest whole day.

The formula above determines the low Bidder and establishes the Contract time.

- 10.5.3. **“Buy America.”** Comply with Buy America in accordance with Section 6L.1.1. For a Bidder who proposes to use foreign steel or iron materials to be considered the apparent low Bidder, their total bid must be at least 25% lower than the next lowest bid if that bid proposes to use domestic steel or iron materials.

This requirement does not apply to minimal use of steel or iron materials provided that the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent (1/10 of 1%) of the Contract amount, whichever is greater

11. CONSIDERATION OF BID ERRORS.

The Owner 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 Owner within 5 business days after the date the bid is opened.
- Identify the items of work involved and include bidding documentation. The Owner may request clarification of submitted documentation.
- The Owner 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 Owner will result in the rejection of the bid of the apparent low bidder and the Owner may consider the second responsive bid. The erring Contractor will not be allowed to bid the project if it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the Owner.

12. TIE BIDS

If the official total bid amount for 2 or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If 2 or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss. If all tie Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss. The Letting Official will preside over the proceedings for the coin toss.

Item 3L

Award and Execution of Contract



1. AWARD OF CONTRACT

The Owner will award, reject, or defer the Contract within 120 days after the opening of the bid. The Owner reserves the right to reject any or all bids and to waive minor technicalities in the best interest of the Owner.

- 1.1. **Award.** The Owner will award the Contract to the low Bidder as determined by Article 2L.10., "Tabulating Bids." The Owner may award a Contract to the second lowest Bidder when the following requirements have been met:

- The low Bidder withdraws its bid.
- The low Bidder fails to enter into a contract with the Owner after Award.
- The second low Bidder's unit bid prices are reasonable.
- The Low Bidder is disqualified.
- The Low Bidder is non-responsive.

Rejection. The Owner will reject the Contract if:

- Collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future bids for the same Contract.
- The low bid is mathematically and materially unbalanced. The Bidder will not be allowed to bid future bids for the same Contract.
- The lowest bid is higher than the Owner's estimate and re-advertising for bids may result in a lower bid.
- The low bid contains a bid error that satisfies the requirements and criteria in Article 2L.11 "Consideration of Bid Errors."
- Rejection of the Contract is in the best interest of the Owner.
- Sworn testimony or discovery in pending litigation with owner.
- Poor performance in execution of work under a previous City of New Braunfels contract.
- Failure to achieve reasonable progress on an existing City of New Braunfels contract.
- Default on previous contracts or failure to execute contract after award.
- Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.
- Failure to timely execute Contract after award.
- Failure of Bidder to demonstrate the minimum experience as specified in Exhibit 4 Contractors Qualifications.
- Failure to register as a general contractor with the City of New Braunfels as set forth in 2L.8.1.8

- 1.2. **Deferral.** The Owner may defer the award or rejection of the Contract when deferral is in the best interest of the Owner.

2. RESCINDING OF AWARD

The Owner reserves the right to cancel the award of any Contract before Contract execution with no compensation due when the cancellation is in the best interest of the Owner. The Owner will return the proposal guaranty to the Contractor.

3. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)/HISTORICALLY UNDERUTILIZED BUSINESS/SMALL BUSINESS ENTERPRISE (SBE)**

Submit all DBE/HUB/SBE information in the time frame specified when required by the bid documents.

4. **EXECUTION OF CONTRACT**

Provide the following within 15 days after written notification of award of the Contract:

- 4.1. **Contract Price.** The submission of a Bid Proposal will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this solicitation, that without exception the Bid Proposal is premised upon performing and furnishing all of the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in, required by or reasonably inferred from the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- 4.2. **Contract.** Executed by Contractor and Surety.

- 4.3. **Bonds.** Executed performance bond and payment bond in the full amount of the Contract price with powers of attorney. Provide bonds in accordance with Table 1. Furnish the payment and performance bonds as a guaranty for the protection of the claimants and the Owner for labor and materials and the faithful performance of the work.

Table 1
Bonding Requirements

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 to \$100,000	Payment
More than \$100,000	Performance and Payment

- 4.4. **Insurance.** Submit a Certificate of Insurance showing coverages in accordance with Contract requirements.

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 Owner receives an acceptable Certificate of Insurance.

Provide the Owner with a Certificate of Insurance verifying the types and amounts of coverage shown in Table 2. The Certificate of Insurance must be in a form approved by the Owner. Any Certificate of Insurance provided must be available for public inspection.

Table 2
Insurance Requirements

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Not Less Than: \$1,000,000/each occ/\$2,000,000/aggregate
Business Automobile Policy	Not Less Than: \$1,000,000 combined single limit Or \$1,000,000 aggregate \$1,000,000 per occurrence
Workers' Compensation	Not Less Than: Statutory Limits \$1,000,000 each accident
Umbrella / Excess Liability	\$2,000,000
All Risk Builder's Risk Insurance (For building-facilities Contracts only)	100% of Construction Value
Additional Coverage: (where necessary – to include but not limited to)	Products/Completed Operations Professional Liability E & O MCS – 90 XCU Motor Truck Cargo

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 2 either through their own coverage or through the Contractor's coverage.

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

For building-facilities Contracts, provide All Risk Builder's Risk Insurance to protect the Owner 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 Owner under the Lost Payable Clause.

For Contracts with railroad requirements, see project-specific details for additional insurance requirements.

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 Owner. The substitute Surety must be authorized by the laws of the State and acceptable to the Owner. 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.

The work performed under this section will not be measured or paid for directly but will be subsidiary to pertinent items.

- 4.5. **Business Ownership Information.** Submit the names and social security numbers of all individuals owning 25% or more of the firm on the Owner's form.

- 4.6. **Railroad Documents.** Provide all required documents for satisfaction of railroad requirements for projects that have work which involves railroad right of way. Comply with the requirements of Article 5L.8., "Cooperation With Railroads."

5. FAILURE TO ENTER CONTRACT

If the Contractor fails to comply with all of the requirements in Article 3L.4., "Execution of Contract," the bid guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Contractor forfeiting the proposal guaranty will not be considered in future bids for the same work unless there has been a substantial change in design of the work.

6. APPROVAL AND EXECUTION OF CONTRACT

The Contract will be approved and signed under authority of the Owner.

7. RETURN OF PROPOSAL GUARANTY

The bid guaranty of the low Bidder will be retained until after the Contract has been rejected or awarded and executed. Bid bonds will not be returned.

8. BEGINNING OF WORK

Do not begin work until authorized in writing by the Owner.

When callout work is required, provide a method of contact available from 8 A.M. until 5 P.M. every workday and 24 hr. a day, 7 days a week for projects with emergency mobilization, unless otherwise shown on the plans. The time of notice will be the transmission time of the notice sent, provided orally, or provided in person by the Owner's representative.

Verify all quantities of materials shown on the plans before ordering.

For Contracts with callout work and work orders, the purchase of materials before a work order is issued or without prior written approval of the Engineer is at the Contractor's risk, and the Department is not obligated for the cost of the materials or work to acquire the materials.

For projects with alternate bid items, the work order will identify the base bid work and additive or deductive alternate work to be performed. The Owner makes no guarantee that the additive or deductive alternate work will be required.

9. ASSIGNMENT OF CONTRACT

Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion rights, title, or interest (including claims) without the approval of the Owner or designated representative. The Owner must deem any proposed assignment justified and legally acceptable before the assignment can take place.

10. EXCLUDED PARTIES

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner or by any state or federal agency.

Item 4L Scope of Work



1. CONTRACT INTENT

The intent of the Contract is to describe the completed work to be performed. Furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with Contract documents.

2. PRECONSTRUCTION CONFERENCE

Before starting work, schedule and attend a preconstruction conference with the Owner. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working day charges. The preconstruction conference may be scheduled with the safety preconstruction meeting described in Section 7L.1.2., "Safety Preconstruction Meeting."

2.1. **Issue Resolution Process.** An issue is any aspect of the Contract where parties of 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.

2.2. Work with the Owner to resolve all issues during the course of the Contract. Refer to Article 4L.7., "Dispute or Claims Procedure," for all unresolved issues.

3. PARTNERING

Not used.

4. CHANGES IN THE WORK

The Engineer reserves the right to make changes in the work including addition, reduction, or elimination of quantities and alterations needed to complete the Contract. Perform the work as altered. These changes will not invalidate the Contract nor release the Surety. The Contractor is responsible for notifying the sureties of any changes to the Contract.

If the changes in quantities or the alterations do not significantly change the character of the work under the Contract, the altered work will be paid for at the Contract unit price. If the changes in quantities or the alterations significantly change the character of the work, the Contract will be amended by a change order. If no unit prices exist, this will be considered extra work and the Contract will be amended by a change order. Provide cost justification as requested, in an acceptable format. Payment will not be made for anticipated profits on work that is eliminated.

Agree on the scope of work and the basis of payment for the change order before beginning the work. If there is no agreement, the Engineer may order the work to proceed under Article 9L.7., "Payment for Extra Work and Force Account Method," or by making an interim adjustment to the Contract. In the case of an adjustment, the Engineer will consider modifying the compensation after the work is performed.

A significant change in the character of the work occurs when:

- the character of the work for any item as altered differs materially in kind or nature from that in the Contract or
- a major item of work varies by more or less than 25% from the original Contract quantity.

When the quantity of work to be done under any major item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.

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.

The City of New Braunfels City Manager has the authority to sign any field alteration up to \$24,999. The City of New Braunfels City Council must approve field alterations of \$25,000 or more.

Table 1
Quantity-Based Price Adjustment Factors

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

If the changes require additional working days to complete the Contract, Contract working days will be adjusted in accordance with Item 8L, "Prosecution and Progress."

5. DIFFERING SITE CONDITIONS

During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The 2 types of differing site conditions are defined as:

- those that differ materially from those indicated in the Contract and
- unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

Notify the Engineer in writing when differing site conditions are encountered. The Engineer will notify the Contractor when the Owner discovers differing site conditions. Unless directed otherwise, do not work on the affected items and leave the site undisturbed. The Engineer will investigate the conditions and determine whether differing site conditions exist. If the differing site conditions cause an increase or decrease in the cost or number of working days specified for the performance of the Contract, the Engineer will make adjustments, excluding the loss of anticipated profits, in accordance with the Contract. Additional compensation will be made only if the required written notice has been provided.

6. REQUESTS FOR ADDITIONAL COMPENSATION

Notify the Engineer in writing of any intent to request additional compensation once there is knowledge of the basis for the request. An assessment of damages is not required to be part of this notice but is desirable. The intent of the written notice requirement is to provide the Owner an opportunity to evaluate the request and to keep an accurate account of the actual costs that may arise. Minimize impacts and costs.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before

performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submit the request in enough detail to enable the Owner to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and compensation.

The Owner will not consider fees and interest on requests for additional compensation. Fees include, but are not limited to: preparation, attorney, printing, shipping, and various other fees.

Damages occur when impacts that are the responsibility of the Owner 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 Owner, 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 Owner.

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:

- 6.1. **Standby Equipment Costs.** Payment will be made in accordance with Section 9L.7.1.4.3., "Standby Equipment Costs."
- 6.2. **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 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 number of original Contract work days), or
 - actual documented costs for the impacted period.

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

Time extensions and suspensions alone will not be justification for reimbursement for project overhead.

- 6.3. **Home Office Overhead.** The Owner will not compensate the Contractor for home office overhead.

7. DISPUTE OR CLAIMS PROCEDURE

The dispute resolution policy promotes a cooperative attitude between the Engineer and Contractor. Emphasis is placed on resolving issues while they are still current, at the project office, and in an informal manner. Open sharing of information is encouraged by all parties involved so the information provided completely and accurately reflects the issues and facts. If information is not shared, decisions may be limited to relying on the documentation that is available for review.

The Owner's goal is to have a dispute settled by the Engineer before elevating it as a claim.

If a dispute cannot be resolved, initiate the Contract claim procedure by filing a Contract claim after the completion of the Contract or when required for orderly performance of the Contract. Submit the claim to the Owner in accordance with state law.

For a claim resulting from enforcement of a warranty period, file the claim no later than one year after expiration of the warranty period. For all other claims, file the claim no later than the date the Owner issues notice to the Contractor that they are in default, the date the Owner terminates the Contract, or one year after the date of final acceptance of the Contract. It is the Contractor's responsibility to submit requests in a timely manner.

7.1. Methods and Procedures

A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full;
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made; and
3. Reserved claims of Owner or Contractor under these Contract Documents, including Article 10 of the City of New Braunfels Construction Project Manual, attachment 1.

B. *Final Resolution of Disputes*

1. For any disputes subject to resolution, Owner and Contractor shall endeavor to resolve their Claims by mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction in Comal County, Texas.
2. For any claim not resolved by mediation, the parties agree to submit such claims to the jurisdiction of the state court of Comal County, Texas, which is the exclusive venue for all claims arising out of this agreement, for final dispute resolution.

7.2. Continuing the Work. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Owner and Contractor may otherwise agree in writing.

7.3. Refer to City of New Braunfels Construction Project Manual Section 6 Article 10 for Changes in The Work: Claims.

7.4. CLAIMS AND DISPUTES. Claims and disputes must be resolved prior to recommendations of final payment. Acceptance and final payment by the Contractor will indicate that any outstanding claims or disputed issues have been resolved to the full satisfaction of the Contractor.

Item 5L

Control of the Work



1. AUTHORITY OF ENGINEER

The Engineer has the authority to observe, test, inspect, approve, and accept the work on behalf of the Owner. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

The Engineer may pursue actions against the Contractor, including but not limited to the withholding of payments and suspending the work, for noncompliance of the Contract.

The Engineer may suspend the work without suspending working day charges for noncompliance of the Contract.

2. Plans and Working Drawings

When required, provide working drawings to supplement the plans with all necessary details not included on the Contract plans. Prepare and furnish working drawings in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures. Have a licensed professional engineer sign, seal, and date the working drawings as indicated in Table 1.

Prepare working drawings using United States standard measures in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Owner approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

Table 1
Signature and Approval Requirements for Working Drawings

Working Drawings For		Requires Licensed Professional Engineer's Signature, Seal, and Date	Requires Owner Approval
1. Alternate or optional designs submitted by Contractor		Yes	Yes
2. Supplementary shop and fabrication drawings for structural Items		No unless required on the plans	See applicable Item
3. Contractor-proposed temporary facilities that affect the public safety, not included on the plans		Yes	Yes
4. Form and falsework details	Bridges, retaining walls, and other major structures	Yes unless otherwise shown on the plans	No ¹
	Minor structures	No unless otherwise shown on the plans	No
5. Erection drawings		Yes	No ^{1,2}
6. Contractor-proposed major modifications to traffic control plan		Yes	Yes

1. The Engineer may require that the Contractor have a licensed professional engineer certify that the temporary works are constructed according to the sealed drawings.

2. Approval is required for items spanning over live traffic or where safety of the traveling public is affected, in the opinion of the Engineer.

Submit shop drawings electronically for the fabrication of structural items.

3. CONFORMITY WITH PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

Furnish materials and perform work in reasonably close conformity with the lines, grades, cross-sections, dimensions, details, gradations, physical and chemical characteristics of materials, and other requirements shown in the Contract (including additional plans for non-site-specific work). Reasonably close conformity limits will be as defined in the respective items of the Contract or, if not defined, as determined by the Engineer. Obtain approval before deviating from the plans and approved working drawings. Do not perform work beyond the lines and grades shown on the plans or any extra work without the Engineer's approval. Work performed beyond the lines and grades shown on the plans or any extra work performed without approval is considered unauthorized and excluded from pay consideration. The Owner will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor's control.

- 3.1. **Acceptance of Defective or Unauthorized Work.** When work fails to meet Contract requirements, but is adequate to serve the design purpose, the Engineer will decide the extent to which the work will be accepted and remain in place. The Engineer will document the basis of acceptance by a letter and may adjust the Contract price.
- 3.2. **Correction of Defective or Unauthorized Work.** When work fails to meet Contract requirements and is inadequate to serve the design purpose it will be considered defective. Correct, or remove and replace, the work at the Contractor's expense, as directed.

The Engineer has the authority to correct or to remove and replace defective or unauthorized work. The cost may be deducted from any money due or to become due to the Contractor.

4. COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

The specifications, accompanying plans (including additional plans for non-site-specific work), special provisions, change orders, and supplemental agreements are intended to work together and be interpreted as a whole.

Numerical dimensions govern over scaled dimensions. Special provisions govern over plans (including general notes), which govern over standard specifications and special specifications. Job-specific plan sheets govern over standard plan sheets.

However, in the case of conflict between plans (including general notes) and specifications regarding responsibilities for hazardous materials and traffic control in Items 1L through 9L and Item 502, "Barricades, Signs, and Traffic Handling," special provisions govern over standard specifications and special specifications, which govern over the plans.

Notify the Engineer promptly of any omissions, errors, or discrepancies discovered so that necessary corrections and interpretations can be made. Failure to promptly notify the Engineer will constitute a waiver of all claims for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies discovered.

5. COOPERATION OF CONTRACTOR

Cooperate with the Engineer. Respond promptly to instructions from the Engineer. Provide all information necessary to administer the Contract.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized Owner representatives and to act for the Contractor. The Engineer may suspend work without suspending working day charges if a Superintendent is not available or does not meet the above criteria.

At the written request of the Engineer, immediately remove from the project any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. Do not reinstate these individuals without the written consent of the Engineer.

Furnish suitable machinery, equipment, and construction forces for the proper prosecution of the work. Provide adequate lighting to address quality requirements and inspection of nighttime work.

The Engineer may suspend the work without suspending working day charges until the Contractor complies with this requirement. All work associated with fulfilling this requirement is subsidiary to the various items of the Contract and no direct compensation will be made.

6. COOPERATING WITH UTILITIES

Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required.

Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with utilities to remove and rearrange utilities to avoid service interruption or duplicate work by the utilities. Allow utilities access to the right of way.

Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to active fire hydrants at all times unless approved by the Engineer.

7. **COOPERATION BETWEEN CONTRACTORS**

Cooperate and coordinate with other Contractors working within the limits or adjacent to the limits.

8. **COOPERATION WITH RAILROADS**

Plan and prosecute portions of the work involving a railway to avoid interference with or hindrance to the railroad company.

If the work is on railroad right of way, do not interfere with the operation of the railroad company's trains or other property.

8.1. **Project-Specific Information.** Refer to project-specific plan sheets in the Contract for specific information concerning the work to be completed by both the Contractor and the railroad within railroad right of way; railroad right of way locations impacted by construction; percentage of Contract work at each location; train movements at each location; and requirements for railroad insurance, flagging, and Right of Entry (ROE) Agreements.

8.2. **Right of Entry Agreement (if required).** The process for obtaining a fully executed ROE Agreement will be as follows:

- The Owner will send the unexecuted ROE Agreement to the Contractor with the unexecuted construction Contract.
- Partially execute the ROE Agreement and return it to the Department with the required insurance attached.
- The Owner will coordinate with the railroad company regarding the further execution of the ROE Agreement and associated fees. The Owner will pay any ROE Agreement fees directly to the railroad company.
- Once the Owner has received the fully-executed ROE Agreement from the railroad company, the Owner will forward the fully-executed ROE Agreement to the Contractor.

9. **CONSTRUCTION SURVEYING**

Use Method A unless otherwise specified in the Contract. Upon request, the Engineer will allow the Contractor to copy available earthwork cross-sections, computer printouts or data files, and other information necessary to establish and control work. Maintain the integrity of control points. Preserve all control points, stakes, marks, and right of way markers. Assume cost and responsibility of replacing disturbed control points, stakes, marks, and right of way markers damaged by the Contractor's or its subcontractor operations. If the Owner repairs disturbed control points, stakes, marks, or right of way markers, the cost of repair may be deducted from money due or to become due to the Contractor. Replace right of way markers under the direction of a RPLS. This work will be subsidiary to pertinent items.

The Engineer reserves the right to make measurements and surveys to determine the accuracy of the work and determine pay quantities. The Engineer's measurements and surveys do not relieve the Contractor's responsibility for accuracy of work. Allow the Engineer adequate time to verify the surveying.

9.1. **Method A.** The Engineer will set control points for establishing lines, slopes, grades, and centerlines and for providing both vertical and horizontal control. At a minimum, provide a controlling pair of monument points at both the beginning and end of construction project for projects less than 2 miles in length. For projects

greater than 2 miles in length, monuments will be set in pairs of 2 at a minimum of 2 miles based on the overall length of the project. Use these control points as reference to perform the work.

Furnish materials, equipment, and qualified workforce necessary for the construction survey work. Place construction points, stakes, and marks at intervals sufficient to control work to established tolerances. Place construction stakes at intervals of no more than 100 ft., or as directed. Place stakes and marks so as not to interfere with normal maintenance operations.

- 9.2. **Method B.** The Engineer will set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines. Furnish additional work, stakes, materials, and templates necessary for marking and maintaining points and lines.
- 9.3. **Method C.** Set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines.

10. INSPECTION

Inspectors are authorized representatives of the Engineer. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection, or lack of inspection, will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract.

Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense. Remove or uncover portions of finished work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Article 4L.4., "Changes in the Work." If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed.

When a government entity, utility, railroad company, or other entity accepts or pays a portion of the Contract, that organization's representatives may inspect the work but cannot direct the Contractor. The right of inspection does not make that entity a party to the Contract and does not interfere with the rights of the parties to the Contract.

11. FINAL CLEANUP

Upon completion of the work, remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition.

Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction. Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

The work performed under this Article will not be paid for directly but will be considered subsidiary to Items of the Contract.

12. FINAL ACCEPTANCE

12.1. Final acceptance is made when all work is complete and the Engineer, in writing, accepts all work for the work locations in the Contract. Final acceptance relieves the Contractor from further Contract responsibilities.

12.1.1. **Work Completed.** Work completed must include work for vegetative establishment and maintenance, test, and performance periods and work to meet the requirements of Article 5L.11., "Final Cleanup."

12.1.2. **Final Inspection.** After all work is complete, the Contractor will request a final inspection by the Engineer authorized to accept the work.

The final inspection will be made as soon as possible, and not later than 10 calendar days after the request. No working day charges will be made between the date of request and final inspection.

After the final inspection, if the work is satisfactory, the Engineer will notify the Contractor in writing of the final acceptance of the work. If the final inspection finds any work to be unsatisfactory, the Engineer will identify in writing all deficiencies in the work requiring correction. Correct the deficiencies identified. Working day charges will resume if these deficiencies are not corrected within 7 calendar days, unless otherwise authorized by the Engineer. Upon correction, the Engineer will make an inspection to verify that all deficiencies were corrected satisfactorily. The Engineer will provide written notice of the final acceptance.

12.1.3. **Final Measurement.** Final measurements and pay quantity adjustments may be made after final acceptance.

12.1.4. **Removal of Traffic Control Devices.** Remove construction traffic control devices and advance warning signs upon final acceptance or as directed.

Item 6L

Control of Materials



1. SOURCE CONTROL

Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Secure the Engineer's approval of the proposed source of materials to be used before their delivery. Materials can be approved at a supply source or staging area but may be reinspected in accordance with Article 6L.4., "Sampling, Testing, and Inspection."

- 1.1. **Buy America.** Comply with the latest provisions of Buy America as listed at 23 CFR 635.410. Use steel or iron materials manufactured in the United States except when:

- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater;
- the Contract contains a replacement alternate item for a foreign source steel or iron product and the Contract is awarded based on the replacement alternate item; or
- the materials are temporarily installed.

Provide a notarized original of the TxDOT FORM D-9-USA-1 (Department Form 1818 or equivalent) with the proper attachments for verification of compliance.

Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

- 1.2. **Convict Produced Materials.** Materials produced by convict labor may only be incorporated in the work if such materials have been:

- produced by convicts who are on parole, supervised release, or probation from prison; or
- produced in a qualified prison facility.

A "qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in federal-aid highway construction projects.

2. MATERIAL QUALITY

Correct or remove materials that fail to meet Contract requirements or that do not produce satisfactory results. Reimburse the Owner for cost incurred if additional sampling and testing is required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

If the Contractor does not comply with this article, the Owner may have defective material removed and replaced. The cost of testing, removal, and replacement will be deducted from the estimate.

3. MANUFACTURER WARRANTIES

Transfer to the Owner warranties and guarantees required by the Contract or received as part of normal trade practice.

4. SAMPLING, TESTING, AND INSPECTION

Incorporate into the work only material that has been inspected, tested, and accepted by the Engineer. Remove, at the Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission.

Unless otherwise mutually agreed, the material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise noted, the Engineer will perform testing at Owner's expense. In addition to facilities and equipment required by the Contract, furnish facilities and calibrated equipment required for tests to control the manufacture of construction items. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.

All materials used are subject to inspection or testing at any time during preparation or use. Material which has been tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are to be made available upon request. Do not use material that, after approval, becomes unfit for use.

Unless otherwise noted in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing outside the contiguous 48 United States, reimburse the Owner for inspection expenses.

5. PLANT INSPECTION AND TESTING

The Engineer may, but is not obligated to, inspect materials at the acquisition or manufacturing source. Material samples will be obtained and tested for compliance with quality requirements.

If inspection is at the plant, meet the following conditions unless otherwise specified:

- Cooperate fully and assist the Engineer during the inspection.
- Ensure the Engineer has full access to all parts of the plant used to manufacture or produce materials.
- In accordance with pertinent items and the Contract, provide a facility at the plant for use by the Engineer as an office or laboratory.
- Provide and maintain adequate safety measures and restroom facilities.
- Furnish and calibrate scales, measuring devices, and other necessary equipment.

The Engineer may provide inspection for periods other than daylight hours if:

- continuous production of materials for Owner use is necessary due to the production volume being handled at the plant, and
- the lighting is adequate to allow satisfactory inspection.

6. STORAGE OF MATERIALS

Store and handle materials to preserve their quality and fitness for the work. Store materials so that they can be easily inspected and retested. Place materials under cover, on wooden platforms, or on other hard, clean surfaces as necessary or when directed.

Obtain approval to store materials on the right of way. Storage space off the right of way is at the Contractor's expense.

7. OWNER-FURNISHED MATERIAL

The Owner will supply materials as shown in the Contract documents. The cost of handling and placing materials supplied by the Owner will not be paid for directly but is subsidiary to the item in which they are used. Assume responsibility for materials upon receipt.

8. USE OF MATERIALS FOUND ON THE RIGHT OF WAY

Material found in the excavation areas and meeting the Owner's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the item for which the material is used.

Do not excavate or remove any material from within the right of way that is not within the limits of the excavation without written permission. If excavation is allowed within a right of way project-specific location (PSL), replace the removed material with suitable material at no cost to the Owner as directed.

9. RECYCLED MATERIALS

The Owner will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling to be used on the project. 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.

10. HAZARDOUS MATERIALS

Comply with the requirements of Article 7L.11., "Responsibility for Hazardous Materials."

Use materials that are free of hazardous materials as defined in Item 1L, "Abbreviations and Definitions."

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 owner may contain hazardous materials. Except when the contract includes bid items for the contractor to remove hazardous materials, the Engineer is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Owner 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 Owner, except in the case of when the contract includes removing and disposing of hazardous materials.

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.

10.1. **Painted Steel Requirements.** Paint containing hazardous materials will be removed as shown on the plans.

10.1.1. **Paint Removed by Third Party.** The Owner may provide a third party to remove paint containing hazardous materials where paint must be removed to perform work or to allow dismantling of the steel.

- 10.1.2. **Paint Removed by the Contractor.** This work may only be performed by a firm or company with one of the following certifications:

- SSPC-QP2 certification for lead painting operations, or
- Certified Lead Firm by the Texas Department of State Health Services.

Maintain certification for the duration of the work. Provide copies of audits or certification if requested.

Comply with worker and public safety regulations, including, but not limited to, OSHA 29 CFR Parts 1910.1025, 1926.62, and 1926.63. Monitor permissible exposure limits in accordance with OSHA requirements.

Remove paint containing hazardous materials from designated areas shown on the plans or as directed. Comply with access limitations shown on the plans.

Provide power hand tools, equipped with high-efficiency particulate air filter vacuums to mechanically remove paint.

Contain, collect, store, transport, and dispose of all waste generated by cleaning operation in accordance with local, state, and federal requirements including 40 CFR 302. Properly characterize and dispose of all wastes. Manage any hazardous wastes in accordance with regulatory requirements and dispose in a facility authorized to accept such wastes. Provide copies of disposal manifests.

The work performed, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 446, "Field Cleaning and Painting Steel."

- 10.2. **Removal and Disposal of Painted Steel.** Painted steel will be disposed of at a steel recycling or smelting facility unless otherwise shown on the plans. If the paint contains hazardous materials, maintain and make available to the Engineer invoices and other records obtained from the facility showing the received weight of the steel and the facility name.

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.

The work provided, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 496, "Removing Structures," and Item 497, "Sale of Salvageable Material."

- 10.3. **Asbestos Requirements.** The plans will indicate locations or elements where asbestos containing materials (ACM) have been found. 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 Owner enough time to abate the asbestos.

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 Part 61, 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.

DSHS requires that notifications be postmarked at least 10 working days before initiating demolition or renovation of each structure or load bearing member shown on the plans. If the actual demolition, renovation, or removal date is changed or delayed, notify the Engineer in writing of these revised dates in sufficient time to allow for the Owner's notification to DSHS to be postmarked at least 10 days in advance of the work.

Failure to provide the above information may require the temporary suspension of work under Article 8L.4., "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Owner retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

- 10.3.1. **Asbestos Removed by Third Party.** At locations where unknown ACM is discovered, the Owner will arrange for abatement by a third party.
- 10.3.2. **Asbestos Removed by the Contractor.** Maintain certification as Asbestos Abatement Contractor by the Texas Department of State Health Services for the duration of the Contract. Provide copies of audits and certification to the Engineer.
- 10.4. **Work Performed by a Third Party.** When the work for removal of paint or asbestos abatement is to be provided by a third party, coordinate and cooperate with the third party and the Owner. Continue other work detailed on the plans not directly involved in the paint removal or asbestos abatement work. Provide notice to the Owner regarding the progress of the work to allow the Owner enough time to schedule the third-party work.

11. SURPLUS MATERIALS

Take ownership of surplus materials unless otherwise shown on the plans or as directed by the Engineer. Remove and dispose of materials in accordance with federal, state, and local regulations. If requested, provide an appropriate level of documentation to verify proper disposal. When materials are disposed of on private property, provide written authorization from the property owner for the use of the property for this purpose upon request.

Item 7L

Legal Relations and Responsibilities



1. SAFETY

- 1.1. **Point of Contact.** Designate a Contractor Safety Point of Contact (CSPOC). The Owner will assign an Owner employee for their point of contact designated as Owner's Safety Point of Contact OSPOC. The CSPOC will ensure that the Contractor's and Subcontractor's employees use the appropriate personal protection equipment (hard hats, safety vests, protective toe footwear, etc.).
- 1.2. **Safety Preconstruction Meeting.** In cooperation with the Engineer, schedule and attend a safety preconstruction meeting (may be a part of the preconstruction conference in Article 4L.2., "Preconstruction Conference." Attendees for this safety preconstruction meeting will be:
- the Contractor,
 - sub-contractors,
 - Owner,
 - local law enforcement, and
 - other personnel that play an active role on the project.
- 1.3. **Public Safety and Convenience.** Ensure the safety and convenience of the public and property as provided in the Contract and as directed by the Engineer. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel. Manage construction to minimize disruption to traffic. Maintain the roadway in a good and passable condition, including proper drainage and provide for ingress and egress to adjacent property.
- Store all equipment not in use in a manner and at locations that will not interfere with the safe passage of traffic.
- If the Engineer determines that any of the requirements of this article have not been met, the Engineer may take any necessary corrective action. This will not change the legal responsibilities set forth in the Contract. The cost to the Owner for this work will be deducted from any money due or to become due to the Contractor.
- 1.4. **Use of Blue Warning Lights.** Texas Transportation Code 547.105 authorizes the use of warning lights to promote safety and provides an effective means of gaining the travelling public's attention as they drive in areas where construction crews are present. In order to influence the public to move over when high risk construction activities are taking place, minimize the utilization of blue warning lights. These lights must be used only while performing work on or near the travel lanes or shoulder where the travelling public encounters construction crews that are not protected by a standard work zone set up such as a lane closure, shoulder closure, or one-way traffic control. Refrain from leaving the warning lights engaged while travelling from one work location to another or while parked on the right of way away from the pavement or a work zone.
- 1.5. **Barricades, Warning and Detour Signs, and Traffic Handling.** Provide, install, move, replace, maintain, clean, and remove all traffic control devices in accordance with the traffic control devices specifications and as shown on the plans and as directed. If details are not shown on the plans, provide devices and work in accordance with the TMUTCD and as directed by the Engineer. When authorized or directed by the Engineer, provide additional signs or traffic control devices not required by the plans.

If an unexpected situation arises that causes the Contractor to believe that the traffic control should be changed, make all reasonable efforts to promptly contact the Engineer. Take prudent actions until the Engineer can be contacted.

The Engineer will make an inspection of the traffic control devices. Comply with the results of the inspection in the prescribed time frame.

- 1.5.1. **Contractor Responsible Person and Alternate.** Designate in writing, a Contractor's Responsible Person (CRP) and an alternate to be the representative of the Contractor who is responsible for taking or directing corrective measures regarding the traffic control. The CRP or alternate must be accessible by phone 24 hr. per day and able to respond when notified. The CRP and alternate must comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.2. **Flaggers.** Designate in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Before beginning work, provide a list of flaggers certified to perform flagging duties.
- Provide flaggers as directed. Flaggers must be courteous and able to effectively communicate with the public. When directing traffic, flaggers must dress appropriately, wear high-visibility safety apparel, use flags, signs, stop-slow paddles, and other hand-signaling devices, and follow the flagging procedures in the TMUTCD. Comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.3. **Law Enforcement Personnel.** Provide uniformed law enforcement personnel with patrol vehicles as directed. Document the work zone traffic services provided in the manner prescribed by the Department. Law enforcement personnel providing work zone traffic services must be trained for the service they perform. Comply with Section 7L.1.5.5., "Training."
- 1.5.4. **Other Work Zone Personnel.** Workers involved with traffic control, including the maintenance of the traffic control, must comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.5. **Training.** Workers involved with the traffic control must be trained using Department-approved training, except in the case of Section 7L.1.5.4, "Other Work Zone Personnel" who may be trained using Contractor-developed Training in lieu of Department-approved Training.

Provide a copy of the certification of completion to the Engineer, except in the case of Contractor-developed Training. Ensure the certification of completion includes the following:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

For Contractor developed Training, maintain a log of attendees. Make the log available upon request. Ensure the log is legible and includes the following:

- print name and signature of participant,
- name and title of trainer, and
- date of training.

2. **LAWS TO BE OBSERVED**

Comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. Indemnify and save harmless the Owner and its representatives against any claim arising from violation by the Contractor of any law, ordinance, or regulation.

This Contract is between the Owner and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

3. **PERMITS, LICENSES, AND TAXES**

Procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Owner and as specified in Article 7L.6., "Preservation of Cultural and Natural Resources and the Environment."

4. **PATENTED DEVICES, MATERIAL, AND PROCESSES**

Indemnify and save harmless the Owner from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the Owner against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.

5. **PERSONAL LIABILITY OF PUBLIC OFFICIALS**

Owner employees are agents and representatives of the Owner and will incur no liability, personal or otherwise, in carrying out the provisions of the Contract or in exercising any power or authority granted under the Contract.

6. **PRESERVATION OF CULTURAL AND NATURAL RESOURCES AND THE ENVIRONMENT**

If the Contractor initiates changes to the Contract and the Owner approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agencies.

- 6.1. **Cultural Resources.** Cease all work immediately if a site, building, or location of historical, archeological, educational, or scientific interest is discovered within the right of way. The site, building, or location will be investigated and evaluated by the Owner.
- 6.2. **Texas Pollutant Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3).** The Contractor, as per SP 506-001L, will file the Notice of Intent (NOI) and the Notice of Termination (NOT) for work shown on the plans in the right of way. Adhere to all requirements of the SWP3.
- 6.3. **Work in Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 404 permits from the U.S. Army Corps of Engineers before work begins. Adhere to all agreements, mitigation plans, and standard best management practices required by the permit. When Contractor-initiated changes in the construction method changes the impacts to waters of the U.S., obtain new or revised Section 404 permits.

- 6.4. **Work in Navigable Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 9 permits from the U.S. Coast Guard before work begins. Adhere to the stipulations of the permits and associated best management practices. When Contractor-initiated changes in the construction method changes the impacts to navigable waters of the U.S., obtain new or revised Section 9 permits.
- 6.5. **Work Over the Recharge or Contributing Zone of Protected Aquifers.** Make every reasonable effort to minimize the degradation of water quality resulting from impacts relating to work over the recharge or contributing zones of protected aquifers, as defined and delineated by the TCEQ. Use best management practices and perform work in accordance with Contract requirements.
- 6.6. **Project-Specific Locations.** For all project-specific locations (PSLs) on or off the right of way (material sources, waste sites, parking areas, storage areas, field offices, staging areas, haul roads, etc.), signing the Contract certifies compliance with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies:
- Occupational Safety and Health Administration,
 - Texas Commission on Environmental Quality,
 - Texas Department of Transportation,
 - Texas Historical Commission,
 - Texas Parks and Wildlife Department,
 - Texas Railroad Commission,
 - U.S. Army Corps of Engineers,
 - U.S. Department of Energy,
 - U.S. Department of Transportation,
 - U.S. Environmental Protection Agency,
 - U.S. Federal Emergency Management Agency, and
 - U.S. Fish and Wildlife Service.

All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract. Maintain documentation of certification activities including environmental consultant reports, Contractor documentation on certification decisions and contacts, and correspondence with the resource agencies. Provide documentation upon request.

Obtain written approval from the Engineer for all PSLs in the right of way not specifically addressed on the plans. Prepare an SWP3 for all Contractor facilities, such as asphalt or concrete plants located within public right of way. Comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc. Address all environmental issues, such as Section 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts. Obtain all permits and clearances in advance.

- 6.7. **Contractor Responsibility.** If the Contractor initiates changes to the Contract and the Owner approves the changes, the Contractor is responsible for obtaining clearances and coordinating with appropriate regulatory agencies.

7. AGRICULTURAL IRRIGATION

Not used.

8. SANITARY PROVISIONS

Provide and maintain adequate, neat, and sanitary toilet accommodations for employees, including Owner employees, in compliance with the requirements and regulations of the Texas Department of Health or other authorities with jurisdiction.

9. ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY NOISE

Minimize noise throughout all phases of the Contract. Exercise particular and special efforts to avoid the creation of unnecessary noise impact on adjacent noise sensitive receptors in the placement of non-mobile equipment such as air compressors, generators, pumps, etc. Place mobile and stationary equipment to cause the least disruption of normal adjacent activities.

All equipment associated with the work must be equipped with components to suppress excessive noise and these components must be maintained in their original operating condition considering normal depreciation. Noise-attenuation devices installed by the manufacturer such as mufflers, engine covers, insulation, etc. must not be removed nor rendered ineffectual nor be permitted to remain off the equipment while the equipment is in use.

10. USING EXPLOSIVES

Do not endanger life or property. The contractor is required to submit a written Blasting Plan if required by the plans or requested by the Engineer. The Owner retains the right to reject the blasting plan. Store all explosives securely and clearly mark all storage places with "DANGER – EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives.

Give at least a 48-hr. advance notice to the appropriate Road Master before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

11. RESPONSIBILITY FOR HAZARDOUS MATERIALS

Comply with the requirements of Article 6L.10., "Hazardous Materials." Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property arising from the generation or disposition of hazardous materials introduced by the Contractor on any work done by the Contractor on Owner-owned or controlled sites. Indemnify and save harmless the Owner and its representatives from any liability or responsibility arising out of the Contractor's generation or disposition of any hazardous materials obtained, processed, stored, shipped, etc., on sites not owned or controlled by the Owner. Reimburse the Owner for all payments, fees, or restitution the Owner is required to make as a result of the Contractor's actions.

12. RESTORING SURFACES OPENED BY PERMISSION

Do not authorize anyone to make an opening in the highway for utilities, drainage, or any other reason without written permission by the Engineer. Repair all openings as directed by the Engineer. Payment for repair of surfaces opened by permission will be made in accordance with pertinent items or Article 4.4., "Changes in the Work." Costs associated with openings made with Contractor authorization but without Owner approval will not be paid.

13. PROTECTING ADJACENT PROPERTY

Protect adjacent property from damage. If any damage results from an act or omission on the part of or on behalf of the Contractor, take corrective action to restore the damaged property to a condition similar or equal to that existing before the damage was done.

14. RESPONSIBILITY FOR DAMAGE CLAIMS

Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the Owner and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.

Pipelines and other underground installations that may or may not be shown on the plans may be located within the right of way. Indemnify and save harmless the Owner from any suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation. Make available the scheduled sequence of work to the respective utility owners so that they may coordinate and schedule adjustments of their utilities that conflict with the proposed work.

15. HAULING AND LOADS ON ROADWAYS AND STRUCTURES

Comply with federal and state laws concerning legal gross and axle weights. Except for the designated Interstate system, vehicles with a valid yearly overweight tolerance permit may haul materials to the work locations at the permitted load. Provide copies of the yearly overweight tolerance permits to the Engineer upon request. Construction equipment is not exempt from oversize or overweight permitting requirements on roadways open to the traveling public.

Protect existing bridges and other structures that will remain in use by the traveling public during and after the completion of the Contract. Construction traffic on roadways, bridges, and culverts within the limits of the work, including any structures under construction that will remain in service during and after completion of the Contract is subject to legal size and weight limitations.

Additional temporary fill may be required by the Engineer for hauling purposes for the protection of certain structures. This additional fill will not be paid directly but will be subsidiary.

Replace or restore to original condition any structure damaged by the Contractor's operations.

The Engineer may allow equipment with oversize or non-divisible overweight loads to operate without a permit within the work locations on pavement structures not open to the traveling public. Submit Contractor-proposed changes to traffic control plans for approval, in accordance with Item 502, "Barricades, Signs, and Traffic Handling." The following sections further address overweight allowances. The Owner will make available to the Contractor any available plans and material reports for existing structures.

- 15.1. **Overweight Construction Traffic Crossing Structures.** The Engineer may allow crossing of a structure not open to the public within the work locations, when divisible or non-divisible loads exceed legal weight limitations, including limits for load-posted bridges. Obtain written permission to make these crossings. Submit for approval a structural analysis by a licensed professional engineer indicating that the excessive loads should be allowed. Provide a manufacturer's certificate of equipment weight that includes the weight distribution on the various axles and any additional parts such as counterweights, the configuration of the axles, or other information necessary for the analysis. Submit the structural analysis and supporting

documentation sufficiently in advance of the move to allow for review. 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.

Schedule loads so that only one vehicle is on any span or continuous unit at any time. Use barricades, fences, or other positive methods to prevent other vehicular access to structures at any time the overweight load is on any span or continuous unit.

- 15.2. **Construction Equipment Operating on Structures.** Cranes and other construction equipment used to perform construction operations that exceed legal weight limits may be allowed on structures. Before any operation that may require placement of equipment on a structure, submit for approval a detailed structural analysis prepared by a licensed professional engineer.

Submit the structural analysis and supporting documentation sufficiently in advance of the use to allow for review and approval. Include all axle loads and configurations, spacing of tracks or wheels, tire loads, outrigger placements, center of gravity, equipment weight, and predicted loads on tires and outriggers for all planned movements, swings, or boom reaches. The analysis must demonstrate that no overstresses will occur in excess of those normally allowed for occasional overweight loads.

- 15.3. **Loads on Structures.** 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. 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.

- 15.4. **Hauling Divisible Overweight Loads on Pavement Within the Work Locations.** The Engineer may allow divisible overweight loads on pavement structures within the work locations not open to the traveling public. Obtain written approval before hauling the overweight loads. Include calculations to demonstrate that there will be no damage or overstress to the pavement structure.

16. CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final acceptance of the Contract, take every precaution against injury or damage to any part of the work by the action of the elements or by any other cause, whether arising from the execution or from the nonexecution of the work. Protect all materials to be used in the work at all times, including periods of suspension.

When any roadway or portion of the roadway is in suitable condition for travel, it may be opened to traffic as directed. Opening of the roadway to traffic does not constitute final acceptance.

Repair damage to all work until final acceptance. Repair damage to existing facilities in accordance with the Contract or as directed. Repair damage to existing facilities or work caused by Contractor operations at the Contractor's expense. Repair work for damage that was not due to the Contractor's operations will not be paid for except as provided below.

- 16.1. **Reimbursable Repair.** Except for damage to appurtenances listed in Section 7L.16.2.1., "Unreimbursed Repair," the Contractor will be reimbursed for repair of damage caused by:

- motor vehicle, watercraft, aircraft, or railroad-train incident;
- vandalism; or
- Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of nature.

16.2. **Appurtenances.**

16.2.1. **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 7L.16.2.2., "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 Owner will limit the reimbursement to the cost that is above the salvage value at the end of the project.

16.2.2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7L.16.1., "Reimbursable Repair," to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).

16.3. **Roadways and Structures.** Until final acceptance, the Contractor is responsible for all work constructed under the Contract. The Owner will not reimburse the Contractor for repair work to new construction, unless the failure or damage is due to one of the causes listed in Section 7L.16.1., "Reimbursable Repair."

The Owner will be responsible for the cost for repair of damage to existing roadways and structures not caused by the Contractor's operations.

16.4. **Detours.** The Contractor will be responsible for the cost of maintenance of detours constructed under the Contract, unless the failure or damage is due to one of the causes listed in Section 7L.16.1., "Reimbursable Repair." The Engineer may consider failures beyond the Contractor's control when determining reimbursement for repairs to detours constructed. The Owner will be responsible for the cost of maintenance of existing streets and roadways used for detours or handling traffic.

16.5. **Relief from Maintenance.** The Engineer may relieve the Contractor from responsibility of maintenance as outlined in this section. This relief does not release the Contractor from responsibility for defective materials or work or constitute final acceptance.

16.5.1. **Isolated Work Locations.** For isolated work locations, when all work is completed, including work for Article 5L.11., "Final Cleanup," the Engineer may relieve the Contractor from responsibility for maintenance.

16.5.2. **Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work for Article 5L.11., "Final Cleanup," with the exception of vegetative establishment and maintenance periods and test and performance periods, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work.

16.5.3. **Work Suspension.** When all work is suspended for an extended period of time, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work during the period of suspension.

16.5.4. **When Directed by the Engineer.** The Engineer may relieve the Contractor from the responsibility for maintenance when directed.

- 16.6. **Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in accordance with pertinent items or Article 4L.4., "Changes in the Work."

17. **ELECTRICAL REQUIREMENTS**

17.1. **Definitions.**

17.1.1. **Electrical Work.** Electrical work is work performed for:

- Item 610, "Roadway Illumination Assemblies,"
- Item 614, "High Mast Illumination Assemblies,"
- Item 616, "Performance Testing of Lighting Systems,"
- Item 617, "Temporary Roadway Illumination,"
- Item 618, "Conduit,"
- Item 620, "Electrical Conductors,"
- Item 621, "Tray Cable,"
- Item 622, "Duct Cable,"
- Item 628, "Electrical Services,"
- Item 680, "Highway Traffic Signals,"
- Item 681, "Temporary Traffic Signals,"
- Item 684, "Traffic Signal Cables,"
- Item 685, "Roadside Flashing Beacon Assemblies,"
- other items that involve either the distribution of electrical power greater than 50 volts or the installation of conduit and duct banks,
- the installation of conduit and wiring associated with Item 624, "Ground Boxes," and Item 656, "Foundations for Traffic Control Devices," and
- the installation of the conduit system for communication and fiber optic cable.

Electrical work does not include the installation of communications or fiber optic cable, or the connections for low voltage and inherently power limited circuits such as electronic or communications equipment. Assembly and placement of poles, structures, cabinets, enclosures, manholes, or other hardware will not be considered electrical work as long as no wiring, wiring connections, or conduit work is done at the time of assembly and placement.

17.1.2. **Specialized Electrical Work.** Specialized electrical work is work that includes the electrical service and feeders, sub-feeders, branch circuits, controls, raceways, and enclosures for the following:

- pump stations,
- moveable bridges,
- ferry slips,
- motor control centers,
- facilities required under Item 504, "Field Office and Laboratory,"
- rest area or other public buildings,
- weigh-in-motion stations,
- electrical services larger than 200 amps,
- electrical services with main or branch circuit breaker sizes not shown in the Contract, and
- any 3-phase electrical power.

17.1.3. **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 Owner. Submit a current and valid certification upon request.

- 17.1.4. **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.

- 17.2. **Work Requirements.** The qualifications required to perform electrical work and specialized electrical work are listed in Table 2.

Table 2
Work Requirements

Type of Work	Qualifications to Perform Work
Electrical work with plans	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Electrical work without plans	Licensed electrician or workers directly supervised by a licensed electrician
Specialized electrical work	Licensed electrician or workers directly supervised by a licensed electrician
Replace lamps, starting aids, and changing fixtures	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Conduit in precast section with approved working drawings	Inspection by licensed electrician or certified person
Conduit in cast-in-place section	Inspection by licensed electrician or certified person
All other electrical work (troubleshooting, repairs, component replacement, etc.)	Licensed electrician or workers directly supervised by a licensed electrician

"Directly supervised by a licensed electrician" means that a licensed electrician is physically present during all electrical work. "Directly supervised by a licensed electrician or certified person" means that a licensed electrician or certified person is physically present during all electrical work.

A non-certified person may install conduit in cast-in-place concrete sections if the work is verified by a certified person before concrete placement.

When the plans specify IMSA certification, the requirements of Table 2 will still apply to the installation of the conduit, ground boxes, electrical services, pole grounding, and electrical conductors installed under Item 620, "Electrical Conductors."

18. PAYROLLS

Ensure that employees, contract labor, and any subcontractor's employees are paid at least the predetermined wage rates shown on the Contract.

Payroll records must contain the information required by law. As an option, form WH-347, "Payroll" is provided by the U.S. Department of Labor.

Maintain payroll and related records during the course of the Contract and preserve these records for a period of 3 years following the completion of the Contract or as required by law.

- 18.1. **Minimum Wage Requirements for Federally Funded Contracts.** Comply with the requirements of FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contract."

Submit payroll records to the Engineer in the manner prescribed by the Owner.

- 18.2. **Minimum Wage Requirements for State Funded Contracts.** Comply with the requirements of 29 USC 206 unless otherwise shown in the Contract.

Upon request, submit payroll records to the Engineer in the manner prescribed by the Owner.

Item 8L

Prosecution and Progress



1. PROSECUTION OF WORK

Unless otherwise shown in the Contract, begin work within 90 calendar days after the date of award. Prosecute the work continuously to completion within the working days specified. Unless otherwise shown in the Contract documents, work may be prosecuted in concurrent phases if no changes are required in the traffic control plan or if a revised traffic control plan is approved. Notify the Engineer at least 24 hr. before beginning work or before beginning any new operation. Do not start new operations to the detriment of work already begun. Minimize interference to traffic.

Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, TxDOT representatives, local utility representatives, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.
- C. The conference will be held at a location selected by Owner. The conference shall be attended by:
 - 1. Contractor's Office Representative;
 - 2. Contractor's Resident Superintendent;
 - 3. Contractor's Safety Representative;
 - 4. Contractor's representative responsible for submitting and processing Shop Drawings and other Submittals to Engineer; and

Any Subcontractors or Suppliers representatives whom Contractor may desire to invite, or Engineer may request.

2. SUBCONTRACTING

Do not sublet any portion of a construction Contract without the Engineer's written approval. A subcontract does not relieve any responsibility under the Contract and bonds. Ensure that all subcontracted work complies with all governing labor provisions.

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner, or any state or federal agency.

For federally funded Contracts, ensure the required federal documents are physically attached to each subcontract agreement including all tiered subcontract agreements.

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

Submit a copy of the executed non-DBE subcontracts including all tiered non-DBE subcontracts when requested.

- 2.1. **Construction Contracts.** Perform work with own organization on at least 30% of the total original Contract cost (25% if the Contractor is an SBE on a wholly State or local funded Contract) excluding any items determined by the Engineer to be specialty items. Specialty items are those that require highly specialized knowledge, abilities, or equipment not usually available in the contracting firm expected to bid on the proposed Contract as a whole.

Specialty items will be shown on the plans or as determined by the Engineer. Bid cost of specialty items performed by subcontractors will be deducted from the total original Contract cost before computing the required amount of work to be performed by the Contractor's own organization.

The term "perform work with own organization" includes only:

- workers employed and paid directly by the Contractor or wholly owned subsidiary;
- equipment owned by the Contractor or wholly owned subsidiary;
- rented or leased equipment operated by the Contractor's employees or wholly owned subsidiary's employees;
- materials incorporated into the work if the majority of the value of the work involved in incorporating the material is performed by the Contractor's own organization, including a wholly owned subsidiary's organization; and
- labor provided by staff leasing firms licensed under Chapter 91 of the Texas Labor Code for nonsupervisory personnel if the Contractor or wholly owned subsidiary maintains direct control over the activities of the leased employees and includes them in the weekly payrolls.

When staff leasing firms provide materials or equipment, they are considered subcontractors. In these instances, submit staff leasing firms for approval as a subcontractor.

Copies of cancelled checks and certified statements may be required to verify compliance with the requirements of this section.

- 2.2. **Payments to Subcontractors.** Report payments for DBE/HUB/SBE subcontracts including tiered DBE/HUB/SBE subcontracts in the manner as prescribed by the Owner.
- 2.3. **Payment Records.** Make payment records, including but not limited to copies of cancelled checks, available for inspection by the Owner. Submit payment records upon request. Retain payment records for a period of 3 years following completion of the Contract work or as specified by the Owner.

Failure to submit this information to the Engineer by the 20th day of each month will result in the Owner taking actions, including, but not limited to, withholding payments and suspending the work. This work will not be measured or paid for directly but will be subsidiary to pertinent items.

- 2.4. **Payrolls.** Comply with Article 7L.19., "Payrolls."

3. COMPUTATION OF CONTRACT TIME FOR COMPLETION

The number of working days is established by the Contract. Working day charges will begin on the date listed in the Notice to Proceed. Working day charges will continue in accordance with the Contract. The Engineer may consider increasing the number of working days under extraordinary circumstances.

Upon request, the Engineer will provide the conceptual time determination schedule to the Contractor for informational purposes only. The schedules assume generic resources, production rates, sequences of construction and average weather conditions based on historic data. The Owner will not adjust the number of working days and milestones, if any, due to differences in opinion regarding any assumptions made in the preparation of the schedule or for errors, omissions, or discrepancies found in the Owner's conceptual time schedule.

- 3.1. **Working Day Charges.** Working days will be charged in accordance with Section 8L.3.1.4., "Standard Workweek," unless otherwise shown in the Contract documents. Working days will be computed and charged in accordance with one of the following:
 - 3.1.1. **Five-Day Workweek.** Working days will be charged Monday through Friday, excluding national holidays, regardless of weather conditions or material availability. The Contractor has the option of working on Saturdays. Provide sufficient advance notice when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or national holiday, and weather and other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.2. **Six-Day Workweek.** Working days will be charged Monday through Saturday, excluding national holidays, regardless of weather conditions or material availability. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Sunday or a national holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.3. **Seven-Day Workweek.** Working days will be charged Monday through Sunday, excluding national holidays, regardless of weather conditions or material availability. Work on national holidays will not be permitted without written permission. If work is performed on any of these holidays requiring an Inspector to be present, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.4. **Standard Workweek.** Working days will be charged Monday through Friday, excluding national or state holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. between 7 A.M. and 6 P.M., unless otherwise shown in the Contract. The Contractor has the option of working on Saturdays or state holidays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.5. **Calendar Day.** Working days will be charged Sunday through Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor.
 - 3.1.6. **Other.** Working days will be charged as shown in the Contract documents.
- 3.2. **Restricted Work Hours.** Restrictions on Contractor work hours and the related definition for working day charges are as prescribed in this article unless otherwise shown in the Contract documents.
- 3.3. **Nighttime Work.** Nighttime work is allowed only when shown in the Contract documents or as directed. Nighttime work is defined as work performed from 30 min. after sunset to 30 min. before sunrise.

- 3.3.1. **Five-, Six-, and Seven-Day Workweeks.** Nighttime work that extends past midnight will be assigned to the following day for the purposes of approval for allowing work on Sundays or national holidays.
- 3.3.2. **Standard Workweek.**
- 3.3.2.1. **Nighttime Work Only.** When nighttime work is allowed or required and daytime work is not allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8L.3.3., "Nighttime Work," unless otherwise shown in the Contract documents.
- 3.3.2.2. **Nighttime Work and Daytime Work Requiring Inspector.** When nighttime work is performed or required and daytime work is allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8L.3.3., "Nighttime Work," or for a continuous period of at least 7 hr. for the alternative daytime period unless otherwise shown in the Contract documents. Only one day will be charged for each 24-hr. time period. When the Engineer agrees to restrict work hours to the nighttime period only, working day charges will be in accordance with Section 8L.3.3.2.1., "Nighttime Work Only."
- 3.4. **Time Statements.** The Engineer will furnish the Contractor a monthly time statement. Review the monthly time statement for correctness. Report protests in writing, no later than 30 calendar days after receipt of the time statement, providing a detailed explanation for each day protested. Not filing a protest within 30 calendar days will indicate acceptance of the working day charges and future consideration of that statement will not be permitted.

4. TEMPORARY SUSPENSION OF WORK OR WORKING DAY CHARGES

The Engineer may suspend the work, wholly or in part, and will provide notice and reasons for the suspension in writing. Suspend and resume work only as directed in writing.

When part of the work is suspended, the Engineer may suspend working day charges only when conditions not under the control of the Contractor prohibit the performance of critical activities. When all of the work is suspended for reasons not under the control of the Contractor, the Engineer will suspend working day charges.

5. CONSTRUCTION SCHEDULES

Prepare, maintain, and submit construction schedules. Construction schedules are used to convey the Contractor's intended work plan to the Owner. Prepare construction schedules with a level of effort sufficient for the work being performed. Construction schedules will not be used as a basis to establish the amount of work performed or for the preparation of the progress payments.

- A. Submit Construction Schedules for the Work in accordance with the requirements of this Section. The Construction Schedule Submittal shall be, at a minimum, a Bar Chart or Critical Path Method (CPM), (computer generated or prepared manually) and a narrative report.
- B. During the Preconstruction Meeting, the Contractor shall provide a sample of the format to be used for the Construction Schedule Submittal. The format is subject to approval by the Engineer. Review of the Submittal will be provided within 7 days of the Submittal of the sample.

- C. Within 7 days of the receipt of approval of the Contractor's format, or 14 days of the Notice to Proceed, whichever is later, the Contractor shall submit a proposed Construction Schedule for review. The Construction Schedule Submittal shall meet the following requirements:
1. The Construction Schedule shall usually include a minimum of 20 activities. Fewer activities may be accepted, if approved by the Owner.
 2. For Projects with work at different physical locations, each location should be indicated separately within the Construction Schedule.
 3. For projects with multiple crafts or significant Subcontractor components, these elements should be indicated separately within the Construction Schedule.
 4. For Projects with multiple types of tasks within the scope, these types of work should be indicated separately within the Construction Schedule.
 5. For Projects with significant major equipment items or materials worth over 25 percent of the Total Contract Price, the Construction Schedule shall indicate dates when these items are to be purchased, when they are to be delivered, and when installed.
 6. For Projects where operating plants are involved, each period of work which will require the shutdown of any process or operation shall be identified in the Construction Schedule and must be agreed to by the Owner prior to starting work in the area.
 7. A Billing Schedule (tabulation of the estimated monthly billings) for the Work shall be prepared and submitted by the Contractor with the submission of the Bid and with every monthly pay application. The billing items indicated on the Billing Schedule shall follow the work items indicated on the Construction Schedule and include a monthly total in addition to the cumulative total. These monthly forecasts are only for planning purposes of the Owner. Monthly payments for actual work completed will be made by the Owner in accordance with Item 9L.13.
- D. The Contractor must receive approval of the Owner for the Construction Schedule and Billing Schedule prior to each monthly Application for Payment. No payment will be made until these are accepted.
- E. Upon written request from the Owner, the Contractor shall revise and submit for approval all or any part of the Construction Schedule to reflect changed conditions in the Work or deviations made from the original plan and schedule.
- F. The Contractor's Construction Schedule shall thereafter be updated with the Actual Start and Actual Finish Dates, Percent Complete, and Remaining Duration of each Activity and submitted monthly. The date to be used in updating the monthly Construction Schedule shall be the same Date as is used in the monthly Application for Payment. This monthly update of the Construction Schedule shall be required before the monthly Application for Payment will be processed for payment.

The narrative Construction Schedule Report shall include a description of changes made to the Construction Schedule; Activities Added to the Construction Schedule; Activities Deleted from the Construction Schedule; any other changes made to the Construction Schedule other than the addition of Actual Start Dates and Actual Finish Dates and Remaining Durations.

Initial Acceptance of Schedules

A		At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer (e.g. Microsoft Project).
	1	The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefore.

	2	Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
	2	Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

- 5.1. The City recognizes the following 2024 holiday schedule. The holiday schedule will be accommodated in the contract work schedule:

New Year's Day	January 1, 2024
Martin Luther King, Jr. Day	January 15, 2024
New Braunfels Founder's Day (Observed)	March 29, 2024
Memorial Day	May 27, 2024
Juneteenth	June 19, 2024
Independence Day	July 4, 2024
Labor Day	September 2, 2024
Comal County Fair Day (Excluding Uniform Fire Dept. Personnel)	September 27, 2024
Veterans Day	November 11, 2024
Thanksgiving Day	November 28, 2024
Day after Thanksgiving	November 29, 2024
Christmas Eve	December 24, 2024
Christmas Day	December 25, 2024

- 5.2. **Project Scheduler.** Designate an individual who will develop and maintain the progress schedule. The Project Scheduler will be prepared to discuss, in detail, the proposed sequence of work and methods of operation, and how that information will be communicated through the Progress Schedule at the Preconstruction Meeting. This individual will also attend the project meetings and make site visits to prepare, develop, and maintain the progress schedules.

- 5.3. **Progress Schedule.** Before starting work, prepare and submit a progress schedule based on the sequence of work and traffic control plan shown in the Contract documents. At a minimum, prepare the progress schedule as a Bar Chart or Critical Path Method (CPM), as shown on the plans. Include all planned work activities and sequences and show Contract completion within the number of working days specified. Incorporate major material procurements, known utility relocations, and other activities that may affect the completion of the Contract in the progress schedule. Show a beginning date, ending date, and duration in whole working days for each activity. Do not use activities exceeding 20 working days, except for agreed upon activities. Show an estimated production rate per working day for each work activity.

- 5.4. **Schedule Format.** Format all project schedules according to the following:

- Begin the project schedule on the date of the start of Contract time or start of activities affecting work on the project;
- Show the sequence and interdependence of activities required for complete performance of the work. If using a CPM schedule, show a predecessor and a successor for each activity; and
- Ensure all work sequences are logical and show a coordinated plan of the work.

CPM schedules must also include:

- Clearly and accurately identify the critical path as the longest continuous path;
- Provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block of each schedule submittal; and

- Through the use of calendars, incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, drainage, etc.) that may be influenced by temperature or precipitation. Also, incorporate non-work periods such as holidays, weekends, or other non-work days as identified in the Contract.

5.5. **Activity Format.** For each activity on the project schedule provide:

- A concise description of the work represented by the activity;
- An activity duration in whole working days;
- Code activities so that organized plots of the schedule may be produced.

CPM schedules must also include the quantity of work and estimated production rate for major items of work. Provide enough information for review of the work being performed.

5.6. **Schedule Types.**

5.6.1. **Bar Chart.** Seven calendar days before the preconstruction meeting, prepare and submit a hard copy of the schedule using the bar chart method.

5.6.1.1. **Progress Schedule Reviews.** Update the project schedule and submit a hard copy when changes to the schedule occur or when requested.

5.6.2. **Critical Path Method.** Prepare and submit the schedule using the CPM.

5.6.2.1. **Preliminary Schedule.** Seven calendar days before the preconstruction meeting, submit both the plotted and electronic copies of the project schedule showing work to be performed within the first 90 calendar days of the project.

5.6.2.2. **Baseline Schedule.** The baseline schedule will be considered the Contractor's plan to successfully construct the project within the time frame and construction sequencing indicated in the Contract. Submit both plotted and electronic copies of the baseline schedule. Submit 2 plots of the schedule: one organized with the activities logically grouped using the activity coding; and the other plot showing only the critical path determined by the longest path, not based on critical float.

Develop and submit the baseline schedule for review within the first 45 calendar days of the project unless the time for submission is extended.

5.6.2.2.1. **Review.** Within 15 calendar days of receipt of the schedule, the Engineer will evaluate, and inform the Contractor if the schedule has been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 10 calendar days. The Engineer's review and acceptance of the project schedule is for conformance to the requirements of the Contract documents only and does not relieve the Contractor of any responsibility for meeting the interim milestone dates (if specified) or the Contract completion date. Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the project schedule. If the Contractor fails to define any element of work, activity, or logic and the Engineer's review does not detect this omission or error, the Contractor is responsible for correcting the error or omission.

Submit an acceptable baseline schedule before the 90th calendar day of the project unless the time for submission is extended.

- 5.6.2.3. **Progress Schedule.** Maintain the project schedule for use by both the Contractor and the Engineer. Submit both the plotted and electronic copy as it will become an as-built record of the daily progress achieved on the project. If continuous progress of an activity is interrupted for any reason except non-work periods (such as holidays, weekend, or interference from temperature or precipitation), then the activity will show the actual finish date as that date of the start of the interruption and the activity will be broken into a subsequent activity (or activities, based on the number of interruptions) similarly numbered with successive alpha character as necessary. The original duration of the subsequent activity will be that of the remaining duration of the original activity. Relationships of the subsequent activity will match those of the original activity so that the integrity of the project schedule logic is maintained. Once established, the original durations and actual dates of all activities must remain unchanged. Revisions to the schedule may be made as necessary.

The project schedule must be revised when changes in construction phasing and sequencing occur or other changes that cause deviation from the original project schedule occur. Any revisions to the schedule must be listed in the monthly update narrative with the purpose of the revision and description of the impact on the project schedule's critical path and project completion date. Create the schedule revision using the latest update before the start of the revision.

Monthly updating of the project schedule will include updating of:

- The actual start dates for activities started;
- The actual finish dates for activities completed;
- The percentage of work completed and remaining duration for each activity started but not yet completed; and
- The calendars to show days actual work was performed on the various work activities.

The cut-off day for recording monthly progress will be the last day of each month. Submit the updated project schedule no later than the 20th calendar day of the following month. The Engineer will evaluate the updated schedule within 5 calendar days of receipt and inform the Contractor if it has or has not been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 5 calendar days.

Provide a brief narrative in a bulleted statement format for major items that have impacted the schedule. Notify the Engineer if resource-leveling is being used.

- 5.6.2.3.1. **Project Schedule Summary Report (PSSR).** When shown on the plans, provide the PSSR instead of the narrative required in Section 8L.5.5.2.3., "Progress Schedule." The PSSR includes a listing of major items that have impacted the schedule as well as a summary of progress in days ahead or behind schedule. Include an explanation of the project progress for the period represented on the form provided by the Owner.

- 5.6.3. **Notice of Potential Time Impact.** Submit a "Notice of Potential Time Impact" when a Contract time extension or adjustment of milestone dates may be justified or when directed.

Failure to provide this notice in the time frames outlined above will compromise the Owner's ability to mitigate the impacts and the Contractor forfeits the right to request a time extension or adjustment of milestone dates unless the circumstances are such that the Contractor could not reasonably have had knowledge of the impact at the time.

- 5.6.4. **Time Impact Analysis.** When directed, provide a time impact analysis. A time impact analysis is an evaluation of the effects of impacts on the project. A time impact analysis consists of the following steps:

- **Step 1.** Establish the status of the project immediately before the impact.
- **Step 2.** Predict the effect of the impact on the schedule update used in Step 1.

- **Step 3.** Track the effects of the impact on the schedule during its occurrence.
- **Step 4.** Establish the status of the project after the impact's effect has ended and provide details identifying any mitigating actions or circumstances used to keep the project ongoing during the impact period.

Determine the time impact by comparing the status of the work before the impact (Step 1) to the prediction of the effect of the impact (Step 2), if requested, and to actual effects of the impact once it is complete (Step 4). Unless otherwise approved, Steps 1, 3, and 4, must be completed before consideration of a Contract time extension or adjustment of a milestone date will be provided. Time extensions will only be considered when delays that affect milestone dates or the Contract completion date are beyond the Contractor's control. Submit Step 4 no later than 15 calendar days after the impact's effects have ended or when all the information on the effect has been realized.

Submit one electronic backup copy of the complete time impact analysis and a copy of the full project schedule incorporating the time impact analysis. If the project schedule is revised after the submittal of a time impact analysis, but before its approval, indicate in writing the need for any modification to the time impact analysis.

The Engineer will review the time impact analysis upon completion of step 4. If this review detects revisions or changes to the schedule that had not been performed and identified in a narrative, the Engineer may reject the time impact analysis. If the Engineer is in agreement with the time impact analysis, a change order may be issued to grant additional working days, or to adjust interim milestones. Once a change order has been executed, incorporate the time impact analysis into the project schedule. The time impact analysis may also be used to support the settlement of disputes and claims. Compensation related to the time impact analysis may be provided at the completion of the analysis or the completion of the project to determine the true role the impact played on the final completion.

The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

6. FAILURE TO COMPLETE WORK ON TIME

The time established for the completion of the work is an essential element of the Contract. If the Contractor fails to complete the work within the number of working days specified, working days will continue to be charged. Failure to complete the Contract, a separate work order, or callout work within the number of working days specified, including any approved additional working days, will result in liquidated damages for each working day charged over the number of working days specified in the Contract. The dollar amount specified in the Contract will be deducted from any money due or to become due the Contractor for each working day the Contract remains incomplete. This amount will be assessed not as a penalty but as liquidated damages.

7. DEFAULT OF THE CONTRACT

7.1 **Declaration of Default.** The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified,
- fails to prosecute the work to assure completion within the number of days specified,
- is uncooperative, disruptive or threatening,
- fails to perform the work in accordance with the Contract requirements,
- neglects or refuses to remove and replace rejected materials or unacceptable work,
- discontinues the prosecution of the work without the Engineer's approval,

- makes an unauthorized assignment,
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so,
- fails to conduct the work in an acceptable manner, or
- commits fraud or other unfixable conduct as determined by the Owner.

If any of these conditions occur, the Engineer will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, the Owner will provide written notice to the Contractor and the Surety to declare the Contractor to be in default of the Contract. The Owner will also provide written notice of default to the Surety. If the Contractor provides the Owner written notice of voluntary default of the Contract, the Owner may waive the 10-day notice of intent to declare the Contractor in default and immediately provide written notice of default to the Contractor and the Surety. Working day charges will continue until completion of the Contract. The Owner may suspend work in accordance with Section 8L.4., "Temporary Suspension of Work or Working Day Charges," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor. The Contractor may be subject to sanctions under the state and/or federal laws and regulations.

The Owner will determine the method used for the completion of the remaining work as follows:

- **Contracts without Performance Bonds.** The Owner will determine the most expeditious and efficient way to complete the work, and recover damages from the Contractor.
- **Contracts with Performance Bonds.** The Owner will, without violating the Contract, demand that the Contractor's Surety complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. The Owner reserves the right to approve or reject proposed subcontractors. Work may resume after the Owner receives and approves Certificates of Insurance as required in Section 3.4.3., "Insurance." Certificates of Insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract. The Owner may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by the Owner for the completion of the work under the Contract will be the responsibility of the Surety.

From the time of notification of the default until work resumes (either by the Surety or the Owner), the Owner will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by the Owner and the Surety. All costs associated with this work will be deducted from money due to the Surety.

The Owner will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by the Owner as a result of the default, including the cost of completing the work under the Contract, costs of maintaining traffic control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay the Owner the balance of these costs in excess of the Contract price. In case the costs incurred by the Owner are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Owner will be entitled to retain the difference.

Comply with Article 8L.2., "Subcontracting," and abide by the DBE/HUB/SBE commitments previously approved by the Owner.

No markups as defined in Article 9L.7., "Payment for Extra Work and Force Account Method," will be allowed for the Surety.

- 7.2. **Wrongful Default.** Submit a written request to the Owner within 14 calendar days of receipt of the notice of default for consideration of wrongful default.

The Owner will determine if the Contractor has been wrongfully defaulted, and will proceed with the following: If the Owner determines the default is proper, the default will remain. If the Contractor is in disagreement, the Contractor may file a claim in accordance with Article 4L.7., "Dispute or Claims Procedure." If the Owner determines it was a wrongful default, the Owner will terminate the Contract for convenience, in accordance with Article 8L.8., "Termination of the Contract."

8. TERMINATION OF THE CONTRACT

The Owner may terminate the Contract in whole or in part whenever:

- the Contractor is prevented from proceeding with the work as a direct result of an executive order of the President of the United States or the Governor of the State;
- the Contractor is prevented from proceeding with the work due to a national emergency, or when the work to be performed under the Contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor as the result of an order or a proclamation of the President of the United States;
- the Contractor is prevented from proceeding with the work due to an order of any federal authority;
- the Contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining court order where the issuance of the restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
- the Owner determines that termination of the Contract is in the best interest of the Owner or the public. This includes, but is not limited to, the discovery of significant hazardous material problems, right of way acquisition problems, or utility conflicts that would cause substantial delays or expense to the Contract.

- 8.1. **Procedures and Submittals.** The Engineer will provide written notice to the Contractor of termination specifying the extent of the termination and the effective date. Upon notice, immediately proceed in accordance with the following:

- stop work as specified in the notice;
- place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete a critical portion of the Contract, as approved;
- terminate all subcontracts to the extent they relate to the work terminated;
- complete performance of the work not terminated;
- settle all outstanding liabilities and termination settlement proposals resulting from the termination for public convenience of the Contract;
- create an inventory report, including all acceptable materials and products obtained for the Contract that have not been incorporated in the work that was terminated (include in the inventory report a description, quantity, location, source, cost, and payment status for each of the acceptable materials and products); and
- take any action necessary, or that the Engineer may direct, for the protection and preservation of the materials and products related to the Contract that are in the possession of the Contractor and in which the Owner has or may acquire an interest.

- 8.2. **Settlement Provisions.** Within 60 calendar days of the date of the notice of termination, submit a final termination settlement proposal, unless otherwise approved. The Engineer will prepare a change order that reduces the affected quantities of work and adds acceptable costs for termination. No claim for loss of anticipated profits will be considered. The Owner will pay reasonable and verifiable termination costs including:

- all work completed at the unit bid price and partial payment for incomplete work;

- the percentage of Item 500, "Mobilization," equivalent to the percentage of work complete or actual cost that can be supported by cost records, whichever is greater;
- expenses necessary for the preparation of termination settlement proposals and support data;
- the termination and settlement of subcontracts;
- storage, transportation, restocking, and other costs incurred necessary for the preservation, protection, or disposition of the termination inventory; and
- other expenses acceptable to the Owner.

Item 9L

Measurement and Payment



1. MEASUREMENT OF QUANTITIES

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

- 1.1. **Linear Measurement.** Unless otherwise specified, all longitudinal measurements for surface areas will be made along the actual surface of the roadway and not horizontally. No deduction will be made for structures in the roadway with an area of 9 sq. ft. or less. For all transverse measurements for areas of base courses, surface courses, and pavements, the dimensions to be used in calculating the pay areas will be the neat dimensions and will not exceed those shown on the plans, unless otherwise directed.
- 1.2. **Volume Measurement.** Transport materials measured for payment by volume in approved hauling vehicles. Display a unique identification mark on each vehicle. Furnish information necessary to calculate the volume capacity of each vehicle. The Engineer may require verification of volume through weight measurement. Use body shapes that allow the capacity to be verified. Load and level the load to the equipment's approved capacity. Loads not hauled in approved vehicles may be rejected.
- 1.3. **Weight Measurement.** Transport materials measured for payment by weight or truck measure in approved hauling vehicles. Furnish certified measurements, tare weights, and legal gross weight calculations for all haul units. Affix a permanent, legible number on the truck and on the trailer to correspond with the certified information. Furnish certified weights of loaded haul units transporting material if requested.

The material will be measured at the point of delivery. The cost of supplying these volume and weight capacities is subsidiary to the pertinent item. For measurement by the ton, in the field, provide measurements in accordance with Item 520, "Weighing and Measuring Equipment," except for items where ton measurements are measured by standard tables.

The Engineer may reject loads and suspend hauling operations for overloading.

- 1.3.1. **Hauling on Routes Accessible to the Traveling Public.** For payment purposes on haul routes accessible to the traveling public, the net weight of the load will be calculated as follows:
 - If the gross vehicle weight is less than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
 - If the gross vehicle weight is more than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.
- 1.3.2. **Hauling on Routes Not Accessible to the Traveling Public.** For payment purposes on haul routes that are not accessible to the traveling public where advance permission is obtained in writing from the Engineer:

- If the gross vehicle weight is less than the maximum allowed, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
- If the gross vehicle weight is more than the maximum allowed, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

2. PLANS QUANTITY MEASUREMENT

Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing specifications or this article.

If the quantity measured as outlined under "Measurement" varies by more than 5% (or as stipulated under "Measurement" for specific Items) from the total estimated quantity for an individual item originally shown in the Contract, an adjustment may be made to the quantity of authorized work done for payment purposes.

When quantities are revised by a change in design approved by the Owner, by change order, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 5% variance will apply to the new plans quantity.

If the total Contract quantity multiplied by the unit bid price for an individual item is less than \$250 and the item is not originally a plans quantity item, then the item may be paid as a plans quantity item if the Engineer and Contractor agree in writing to fix the final quantity as a plans quantity.

For Contracts with callout work and work orders, plans quantity measurement requirements are not applicable.

3. ADJUSTMENT OF QUANTITIES

The party to the Contract requesting the adjustment will provide field measurements and calculations showing the revised quantity. When approved, this revised quantity will constitute the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that item, except as provided for in Article 4L.4., "Changes in the Work."

4. SCOPE OF PAYMENT

Payment of the Contract unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the item of work under the Contract. Until final acceptance in accordance with Article 5L.12., "Final Acceptance," assume liability for completing the work according to the Contract documents and any loss or damage arising from the performance of the work or from the action of the elements, infringement of patent, trademark, or copyright, except as provided elsewhere in the Contract.

The Owner will only pay for material incorporated into the work in accordance with the Contract. Payment of progress estimates will in no way affect the Contractor's obligation under the Contract to repair or replace any defective parts in the construction or to replace any defective materials used in the construction and to be responsible for all damages due to defects if the defects and damages are discovered on or before final inspection and acceptance of the work.

5. **PROGRESS PAYMENTS**

The procedure for monthly payments is:

1. Contractor shall draft pay estimates for each division of the Work (roadway, landscape, electrical/communications, water/wastewater) along with current as-built plans, current progress photographs, and updated progress & billing schedules to the Inspector on or before the 1st day of the month with invoices for Stored Materials.
2. The Inspector will verify quantities and Stored Materials and initial the draft pay estimate.
3. Contractor will submit a signed and notarized pay estimates for each division of the Work through Procore on or before the 10th day of the month, including all invoices for Stored Materials, subsidiary required documentation listed in 5.1, and the Partial Waiver of Lien.

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments is five percent (5%) as stipulated in the Agreement. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages.
 - a. 95% (percent) of Work completed.
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;

- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
- 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
- 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the such representations stated in Section 9L.5.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with either condition below; or
 - i. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with

- any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- ii. In exercising the rights and remedies under this Paragraph, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other Contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
 - d) Engineer has actual knowledge of the occurrence of any of the events below
 - I. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established as adjusted from time to time);
 - II. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - III. Contractor's repeated disregard of the authority of Engineer; or
 - IV. Contractor's violation in any substantial way of any provisions of the Contract Documents.

C. *Payment Becomes Due:*

1. Thirty (30) days after presentation of the Application for Payment to Engineer, the amount recommended will (subject to the provisions of Section 9L.5.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Section 9L.5.B5.a through 9L.5.B5.c or 9L.5.B.5d.
2. If Owner refuses to make payment of the full amount, Owner will give Contractor immediate written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Section 9L.5.C.1 and subject to interest as provided in the Agreement.

6. **PAYMENT FOR MATERIAL ON HAND (MOH)**

If payment for MOH is desired, request compensation for the invoice cost of acceptable nonperishable materials that have not been used in the work before the request, and that have been delivered to the work location or are in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Include only materials that have been sampled, tested, approved, or certified, and are ready for incorporation into the work. Only materials which are completely constructed or fabricated on the Contractor's order for a specific Contract and are so marked and on which an approved test report has been issued are eligible. Payment for MOH may include the following types of items: concrete traffic barrier, precast concrete box culverts, concrete piling, reinforced concrete pipe, and illumination poles. Any repairs required after fabricated materials have been approved for storage will require approval of the Engineer before being made and will be made at the Contractor's expense. Include only those materials that have an invoice cost of at least \$1,000 in the request for MOH payment.

If the request is acceptable, the Engineer will include payment for MOH in a progress payment. Payment for MOH does not constitute acceptance of the materials. Payment will not exceed the actual cost of the material as established by invoice, or the total cost for the associated item less reasonable placement costs, whichever is less. Materials for which the Contractor does not have a paid invoice within 60 days will not be eligible for payment and will be removed from the estimate. Payment may be limited to a portion of the invoice cost or unit price if shown elsewhere in the Contract. Payment for precast products fabricated or constructed by the Contractor for which invoices or freight bills are not available may be made based on statements of actual cost.

Submit the request on forms provided by the Owner. These forms may be electronically reproduced, provided they are in the same format and contain all the required information and certifications. Continue to submit monthly MOH forms until the total value of MOH is \$0.

By submitting a request for MOH payment, the Contractor expressly authorizes the Owner to audit MOH records, and to perform process reviews of the record-keeping system. If the Owner determines noncompliance with any of the requirements of this provision, the Owner may exclude payment for any or all MOH for the duration of the Contract.

Maintain all records relating to MOH payment until final acceptance. Provide these records to the Engineer upon request.

7. **PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT METHOD**

Payment for extra work directed, performed, and accepted will be made in accordance with Article 4L.4., "Changes in the Work." Payment for extra work may be established by agreed unit prices.

Agreed unit prices are unit prices that include markups and are comparable to recent bid prices for the same character of work. These unit prices may be established without additional breakdown justification.

- 7.1. **Markups.** Payment for extra work may include markups as compensation for the use of small tools, overhead expense, and profit.
- 7.1.1. **Labor.** Compensation will be made for payroll rates for each hour that the labor, foremen, or other approved workers are actually engaged in the work. In no case will the rate of wages be less than the minimum shown in the Contract for a particular category. An additional 25% of this sum will be paid as compensation for overhead, superintendence, profit, and small tools.
- 7.1.2. **Insurance and Taxes.** An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9L.7.1.1., "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.

7.1.3. **Materials.** Compensation will be made for materials associated with the work based on actual delivered invoice costs, less any discount. An additional 25% of this sum will be paid as compensation for overhead and profit.

7.1.4. **Equipment.** Payment will be made for the established equipment hourly rates for each hour that the equipment is involved in the work. An additional 15% of this sum will be paid as compensation for overhead and profit not included in the rates.

Transportation cost for mobilizing equipment will be included if the equipment is mobilized from an off-site location.

7.1.4.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment, use the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor to establish hourly rates. Use the rates in effect for each section of the *Rental Rate Blue Book* at the time of use.

If a rate has not been established for a particular piece of equipment in the *Rental Rate Blue Book*, the Engineer will allow a reasonable hourly rate. This price will include operating costs.

Payment for equipment will be made for the actual hours used in the work. The Owner reserves the right to withhold payment for low production or lack of progress. Payment will not be made for time lost for equipment breakdowns, time spent to repair equipment, or time after equipment is no longer needed.

If equipment is used intermittently while dedicated solely to the work, payment will be made for the duration the equipment is assigned to the work but no more than 8 hours will be paid during a 24-hour day, nor more than 40 hours per week, nor more than 176 hours per month, except when time is computed using a six-day or seven-day workweek. When using a six-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 48 hours per week, nor more than 211 hours per month. When using a seven-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 56 hours per week, nor more than 246 hours per month.

7.1.4.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor, payment will be made at the invoice daily rental rate for each day the equipment is needed for the work. The Owner reserves the right to limit the daily rate to comparable *Rental Rate Blue Book* rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs, and servicing, the *Rental Rate Blue Book* hourly operating cost for each hour the equipment is operated will be added.

When the invoice specifies equipment operators as a component of the equipment rental, payment will be made at the invoice rate for each operator for each day the equipment is needed for the work.

7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9L.7.1.4., "Equipment," except that:

7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment:

- Standby will be paid at 50% (to remove operating cost) of the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

- 7.1.4.3.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor:
- Standby will be paid at the invoice daily rental rate, excluding operating cost, which includes fuel, lubricants, repairs, and servicing. The Owner reserves the right to limit the daily standby rate to comparable FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.
 - Standby will be paid for equipment operators when included on the invoice and equipment operators are actually on standby.
 - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.
- 7.1.5. **Subcontracting.** An additional 5% of the actual invoice cost will be paid to the Contractor as compensation for administrative cost, superintendence, and profit.
- 7.1.6. **Law Enforcement.** An additional 5% of the actual invoice cost will be paid as compensation for administrative costs, superintendence, and profit.
- 7.1.7. **Railroad Flaggers.** An additional 5% of the actual invoice cost will be paid as compensation for administrative cost, superintendence, and profit.
- 7.1.8. **Bond Cost.** An additional 1% of the total compensation provided in Article 9L.7., "Payment for Extra Work and Force Account Method," will be paid for the increase in bond.

8. RETAINAGE

The owner will retain five percent (5%) retainage of each application for Payment from the Contractor. Upon Final Completion of the work, the retainage shall be released.

9. 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 Engineer.

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

Pay 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 Owner and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Owner; and
- the work done by the subcontractor has been inspected, approved, and paid by the Owner.

Provide a certification of prompt payment in accordance with the Owner'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.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7L.16., "Contractor's Responsibility for Work."

The Owner 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.

10. FINAL PAYMENT

When the Contract has been completed, all work has been approved, final acceptance has been made in accordance with Article 5L.12., "Final Acceptance," and Contractor submittals have been received, the Engineer will prepare a final estimate for payment showing the total quantity of work completed and the money owed the Contractor. The final payment will reflect the entire sum due, less any sums previously paid.

SPECIAL PROVISIONS

FEDERAL CONTRACTS

FHWA 1273 Required Contract Provisions Federal-aid Construction Contracts

SP 000-002L Nondiscrimination

SP 000-003L Certification of Nondiscrimination in Employment

**SP 000-004L Notice of Requirement for Affirmative Action To
Ensure Equal Employment Opportunity**

**SP 000-005L Standard Federal Equal Employment Opportunity
Construction Contract**

**SP 000-241L Cardo Preference Act Requirements in Federal Aid
Contracts**

**SP 000-394L Disadvantaged Business Enterprise in Federal-aid
Contracts**

SP 000-1243L Schedule of Liquidated Damages

SP 002-009L Instructions to Bidders

SP 006-040L Control of Materials

SP 007-011L Legal Relations and Responsibilities

SP 009-016L Measurement and Payment

Bid Items:

**SP 506-001L Temporary Erosion, Sedimentation, and Environmental
Controls**

FHWA-1273 – Revised October 23, 2023

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Fringe benefits not expressed as an hourly rate.

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV, 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to 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 as provided in 29 CFR 5.5.

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

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

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

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

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

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

3. Withholding for unpaid wages and liquidated damages

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

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

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

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

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

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

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**
This provision is applicable to all Federal-aid projects funded
under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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

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Special Provision to Item 000

Nondiscrimination



1. 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.

Owner, 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 of Owner's programs or activities.

2. 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 Owner.

3. NONDISCRIMINATION PROVISIONS

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

- 3.1. **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.
- 3.2. **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.
- 3.3. **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.
- 3.4. **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 Owner 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 Owner or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

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- 3.5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it, the Owner may determine to be appropriate, including, but not limited to:
- withholding of payments to the contractor under the contract until the contractor complies, and/or
 - cancellation, termination or suspension of the contract, in whole or in part.
- 3.6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs (3.1) through (3.6) 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 Owner 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 Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

000-003L

Special Provision to Item 000

Certification of Nondiscrimination in Employment



1. GENERAL

By signing this proposal, the Bidder certifies that Bidder 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 Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder 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.

000-004L

Special Provision to Item 000

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

2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

2.2. 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, %	Goals for female participation in each trade, %
See Table 1	6.9

2.3. 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 will 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 will 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 must 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 will 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.

2.4. 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 must provide written notification to the Owner 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 Owner in the award. The notification will list the names,

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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
Goals for Minority Participation

County	Participation, %	County	Participation, %
Anderson	22.5	Chambers	27.4
Andrews	18.9	Cherokee	22.5
Angelina	22.5	Childress	11.0
Aransas	44.2	Clay	12.4
Archer	11.0	Cochran	19.5
Armstrong	11.0	Coke	20.0
Atascosa	49.4	Coleman	10.9
Austin	27.4	Collin	18.2
Bailey	19.5	Collingsworth	11.0
Bandera	49.4	Colorado	27.4
Bastrop	24.2	Comal	47.8
Baylor	11.0	Comanche	10.9
Bee	44.2	Concho	20.0
Bell	16.4	Cooke	17.2
Bexar	47.8	Coryell	16.4
Blanco	24.2	Cottle	11.0
Borden	19.5	Crane	18.9
Bosque	18.6	Crockett	20.0
Bowie	19.7	Crosby	19.5
Brazoria	27.3	Culberson	49.0
Brazos	23.7	Dallam	11.0
Brewster	49.0	Dallas	18.2
Briscoe	11.0	Dawson	19.5
Brooks	44.2	Deaf Smith	11.0
Brown	10.9	Delta	17.2
Burleson	27.4	Denton	18.2
Burnet	24.2	DeWitt	27.4
Caldwell	24.2	Dickens	19.5
Calhoun	27.4	Dimmit	49.4
Callahan	11.6	Donley	11.0
Cameron	71.0	Duval	44.2
Camp	20.2	Eastland	10.9
Carson	11.0	Ector	15.1
Cass	20.2	Edwards	49.4
Castro	11.0	Ellis	18.2

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County	Participation, %	County	Participation, %
El Paso	57.8	Kenedy	44.2
Erath	17.2	Kent	10.9
Falls	18.6	Kerr	49.4
Fannin	17.2	Kimble	20.0
Fayette	27.4	King	19.5
Fisher	10.9	Kinney	49.4
Floyd	19.5	Kleberg	44.2
Foard	11.0	Knox	10.9
Fort Bend	27.3	Lamar	20.2
Franklin	17.2	Lamb	19.5
Freestone	18.6	Lampasas	18.6
Frio	49.4	LaSalle	49.4
Gaines	19.5	Lavaca	27.4
Galveston	28.9	Lee	24.2
Garza	19.5	Leon	27.4
Gillespie	49.4	Liberty	27.3
Glasscock	18.9	Limestone	18.6
Goliad	27.4	Lipscomb	11.0
Gonzales	49.4	Live Oak	44.2
Gray	11.0	Llano	24.2
Grayson	9.4	Loving	18.9
Gregg	22.8	Lubbock	19.6
Grimes	27.4	Lynn	19.5
Guadalupe	47.8	Madison	27.4
Hale	19.5	Marion	22.5
Hall	11.0	Martin	18.9
Hamilton	18.6	Mason	20.0
Hansford	11.0	Matagorda	27.4
Hardeman	11.0	Maverick	49.4
Hardin	22.6	McCulloch	20.0
Harris	27.3	McLennan	20.7
Harrison	22.8	McMullen	49.4
Hartley	11.0	Medina	49.4
Haskell	10.9	Menard	20.0
Hays	24.1	Midland	19.1
Hemphill	11.0	Milam	18.6
Henderson	22.5	Mills	18.6
Hidalgo	72.8	Mitchell	10.9
Hill	18.6	Montague	17.2
Hockley	19.5	Montgomery	27.3
Hood	18.2	Moore	11.0
Hopkins	17.2	Morris	20.2
Houston	22.5	Motley	19.5
Howard	18.9	Nacogdoches	22.5
Hudspeth	49.0	Navarro	17.2
Hunt	17.2	Newton	22.6
Hutchinson	11.0	Nolan	10.9
Irion	20.0	Nueces	41.7
Jack	17.2	Ochiltree	11.0
Jackson	27.4	Oldham	11.0
Jasper	22.6	Orange	22.6
Jeff Davis	49.0	Palo Pinto	17.2
Jefferson	22.6	Panola	22.5
Jim Hogg	49.4	Parker	18.2
Jim Wells	44.2	Parmer	11.0
Johnson	18.2	Pecos	18.9
Jones	11.6	Polk	27.4
Karnes	49.4	Potter	9.3
Kaufman	18.2	Presidio	49.0
Kendall	49.4	Randall	9.3

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

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Special Provision to Item 000

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)



1. GENERAL

1.1. As used in these specifications:

- "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - 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
 - 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).

1.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will 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.

1.3. 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) will 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 equal employment opportunity (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.

1.4. The Contractor will implement the specific affirmative action standards provided in Section 1.7.1. through Section 1.7.16. 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 will 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

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Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- 1.5. 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 will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 1.6. 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.
- 1.7. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensive as the following:
 - 1.7.1. 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 will 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.
 - 1.7.2. 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.
 - 1.7.3. 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 will be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - 1.7.4. 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.
 - 1.7.5. 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 U.S. Department of Labor. The Contractor will provide notice of these programs to the sources compiled under 7b above.
 - 1.7.6. 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.
 - 1.7.7. 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

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employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- 1.7.8. 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.
- 1.7.9. 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 before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 1.7.10. 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.
- 1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 1.7.12. 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.
- 1.7.13. 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.
- 1.7.14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
- 1.7.15. 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.
- 1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 7.1. through Section 7.16.). 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 Section 7.1. through Section 7.16. 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 will not be a defense for the Contractor's noncompliance.
- 1.9. 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

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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).

- 1.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 1.11. The Contractor will not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
- 1.12. The Contractor will 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 will be in violation of these specifications and Executive Order 11246, as amended.
- 1.13. The Contractor, in fulfilling its obligations under these specifications, will 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 will proceed in accordance with 41 CFR 60-4.8.
- 1.14. The Contractor will 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 must 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 must 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.
- 1.15. Nothing herein provided will 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).
- 1.16. 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, will 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 included instructions.

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Special Provision 000

Cargo Preference Act Requirements in Federal Aid Contracts



1. DESCRIPTION

All recipients of federal financial assistance are required to comply with the U.S. Department of Transportation's (DOT) Cargo Preference Act Requirements, 46 CFR Part 381, Use of United States-Flag Vessels.

This requirement applies to material or equipment that is acquired specifically for a Federal-aid highway project. It is not applicable to goods or materials that come into inventories independent of a Federal Highway Administration (FHWA) funded contract.

When oceanic shipments are necessary for materials or equipment acquired for a specific Federal-aid construction project, the contractor agrees to:

- Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- Furnish a legible copy of a rated, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of 46 CFR Part 381 Section 7, "Federal Grant, Guaranty, Loan and Advance of Funds Agreements," within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, to both the Engineer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- Insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

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Special Provision to Item 000

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.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

- 2.1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will 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.

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.

The Contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure 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.

The requirements of this Special Provision must be physically included in any subcontract.

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.

2.2. Definitions.

- 2.2.1. **Administrative Reconsideration.** A process by which the low bidder may request reconsideration when the Department determines the good faith effort (GFE) requirements have not been met.

- 2.2.2. **Commercially Useful Function (CUF).** A CUF occurs when a DBE has the responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing, and supervising the work.

- 2.2.3. **Disadvantaged Business Enterprise (DBE).** A for-profit 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.

- 2.2.4. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge, and

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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.

- 2.2.5. **DOT.** 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).
- 2.2.6. **Federal-Aid Contract.** Any Contract between the Owner and a Contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.7. **Good Faith Effort.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- 2.2.8. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website:
<http://www.census.gov/eos/www/naics/>.
- 2.2.9. **Race-Conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- 2.2.10. **Race-Neutral DBE Participation.** Any participation by a DBE through customary competitive procurement procedures.
- 2.2.11. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on a Contract may be counted toward achievement of the assigned DBE Contract goal.
- 2.3. **Contractor's Responsibilities.**
 - 2.3.1. **DBE Liaison Officer.** 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.
 - 2.3.2. **Compliance Tracking System (CTS).** This Contract is subject to Contract compliance tracking. Contractors and DBEs are required to provide any noted and requested Contract compliance-related data to the Owner. This includes, but is not limited to, commitments, payments, substitutions, and good faith efforts. Contractors and DBEs are responsible for responding by any noted response date or due date to any instructions or request for information by the Owner.
 - 2.3.3. **Apparent Low Bidder.** The apparent low bidder must submit DBE commitments to satisfy the DBE goal or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, no later than 5 calendar days after bid opening. The means of transmittal and the risk of timely receipt of the information will be the bidder's responsibility and no extension of the 5-calendar-day timeframe will be allowed for any reason.
 - 2.3.4. **DBE Contractor.** A DBE Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. In the event a DBE subcontracts to a non-DBE, that information must be reported monthly.
 - 2.3.5. **DBE Committal.** Only those DBEs certified by the TUCP are eligible to be used for goal attainment. The Directory can be accessed at the following Internet address:
<https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

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A DBE must be certified on the day the commitment is considered and at time of subcontract execution. It is the Contractor's responsibility to ensure firms identified for participation are approved certified DBE firms.

The Bidder is responsible to ensure that all submittals are checked for accuracy. Any and all omissions, deletions, and/or errors that may affect the end result of the commitment package are the sole liabilities of the bidder.

Commitments in excess of the goal are considered race-neutral commitments.

- 2.3.6. **Good Faith Effort Requirements.** A Contractor who cannot meet the Contract goal, in whole or in part, must make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

- 2.3.6.1. **Administrative Reconsideration.** If the Owner determines that the apparent low bidder has failed to satisfy the good faith efforts requirement, the Owner will notify the Bidder of the failure and will give the Bidder an opportunity for administrative reconsideration.

The Bidder must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Owner.

If a reconsideration request is timely received, the reconsideration decision will be made by the Owner's DBE liaison officer or, if the DBE liaison officer took part in the original determination that the Bidder failed to satisfy the good faith effort requirements, an Owner employee who holds a senior leadership position and reports directly to the executive officer, and who did not take part in the original determination will act as an administrative hearing officer. The Bidder may provide written documentation or argument concerning whether the assigned DBE contract goal was met or whether adequate good faith efforts were made to meet the Contract goal.

The DBE liaison or other Owner employee making the reconsideration determination may request a meeting with the Bidder to discuss whether the goal commitments were met or whether adequate good faith efforts were made to obtain the commitments to meet the Contract goal.

The meeting must be held within 7 days of the date of the request submitted under this section. If the Bidder is unavailable to meet during the 7-day period, the reconsideration decision will be made on the written information provided by the Bidder.

The Owner will provide to the Bidder a written decision that explains the basis for finding that the Bidder did not meet the Contract goal or did not make adequate good faith efforts to meet the Contract goal, within 7 days of the date of the notice issued in this section.

The reconsideration decision is final and not subject to administrative appeal.

- 2.3.7. **Determination of DBE Participation.** The work performed by the DBE must be reasonably construed to be included in the work area and NAICS work code identified by the Contractor in the approved commitment.

Participation by a DBE on a Contract will not be counted toward DBE goals until the amount of the participation has been paid to the DBE.

Payments made to a DBE that was not on the original commitment may be counted toward the Contract goal if that DBE was certified as a DBE before the execution of the subcontract and has performed a Commercially Useful Function.

The total amount paid to the DBE for work performed with its 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.

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DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the Contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of the DBE's subcontract, the DBE firm may complete the work and the DBE firm's participation will be counted toward the Contract goal. If the DBE firm is decertified before the DBE firm has signed a subcontract, the Contractor is obligated to replace the ineligible DBE firm or demonstrate that it has made good faith efforts to do so.

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

The Contractor may count only 60% of its expenditure to a DBE regular dealer. According to 49 CFR 26.55(e)(2)(i), a DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character 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 firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. A long-term lease with a third-party transportation company is not eligible for 60% goal credit.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the Contractor may 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.

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.

2.3.8.

Commercially Useful Function. It is the Contractor's obligation to ensure that each DBE used on federal-assisted contracts performs a commercially useful function on the Contract.

The Owner will monitor performance during the Contract to ensure each DBE is performing a CUF.

Under the terms established in 49 CFR 26.55, a DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

With respect to material and supplies used on the Contract, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract. 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. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

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A DBE does not perform a CUF when 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. The Owner will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

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 than would be expected on the basis of normal industry practice for the type of work involved, the Owner will presume that the DBE is not performing a CUF.

If the Owner determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible participation. The denial period of time may occur before or after a determination has been made by the Owner.

In case of the denial of credit for non-performance, the Contractor will be required to provide a substitute DBE to meet the Contract goal or provide an adequate good faith effort when applicable.

- 2.3.8.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before the Owner makes a final finding that no CUF has been performed by a DBE, the Owner will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal.

- 2.3.9. **Joint Check.** The use of joint checks between a Contractor and a DBE is allowed with Owner approval. To obtain approval, the Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Owner.

The Owner will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the Contract goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny and may result in the lack of participation towards the Contract goal requirement if DBE independence cannot be established.

Joint checks will not be allowed simply for the convenience of the Contractor.

If the proper procedures are not followed or the Owner determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the Contract goal requirement, and the Contractor will need to make up the difference elsewhere on the project.

- 2.3.10. **DBE Termination and Substitution.** No DBE named in the commitment submitted under Section 2.3.5. will be terminated for convenience, in whole or part, without the Owner's approval. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Unless consent is provided, the Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor, prior to submitting its request to terminate, must first give written notice to the DBE of its intent to terminate and the reason for the termination. The Contractor will copy the Owner on the Notice of Intent to terminate.

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The DBE has 5 calendar days to respond to the Contractor's notice and will advise the Contractor and the Owner of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owner should not approve the prime Contractor's request for termination.

The Owner may provide a shorter response time if required in a particular case as a matter of public necessity.

The Owner will consider both the Contractor's request and DBE's stated position prior to approving the request. The Owner may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. If the Owner does not approve the request, the Contractor must continue to use the committed DBE firm in accordance with the Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the Contractor seeks to terminate, reduce, or substitute a DBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the DBE firm was engaged.

When a DBE subcontractor is terminated, make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established Contract goal, the work that the original DBE was to have performed under the Contract.

Submit the completed Form 2228, "DBE Termination Substitution Request," within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Owner will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

- 2.3.11. **Reports and Records.** By the 15th of each month and after work begins, report payments to meet the DBE goal and for DBE race-neutral participation on projects with or without goals. These payment reports will be required until all DBE subcontracting or material supply activity is completed. Negative payment reports are required when no activity has occurred in a monthly period.

Notify the Owner if payment to any DBE subcontractor is withheld or reduced.

Before receiving final payment from the Owner, the Contractor must indicate a final payment on the compliance tracking system. The final payment is a summary of all payments made to the DBEs on the project.

All records must be retained for a period of 3 years following completion of the Contract work, and must be available at reasonable times and places for inspection by authorized representatives of the Owner, Texas Department of Transportation or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

- 2.3.12. **Failure to Comply.** If the Owner determines the Contractor has failed to demonstrate good faith efforts to meet the assigned goal, the Contractor will be given an opportunity for reconsideration by the Owner.

A Contractor's failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Owner 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 Owner or such other remedy or remedies as the Owner deems appropriate.

- 2.3.13. **Investigations.** The Owner may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs and complainants using DBE Subcontractors to meet the Contract goal, are required to cooperate fully and promptly with compliance reviews, investigations, and other requests for information.

000-394L

- 2.3.14. **Falsification and Misrepresentation.** If the Owner determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Owner to be unallowable, or if the Contractor engages in repeated violations, falsification, or misrepresentation, the Owner may:
- refuse to count any fraudulent or misrepresented DBE participation;
 - withhold progress payments to the Contractor commensurate with the violation;
 - refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
 - seek any other available contractual remedy.

000-1243L

Special Provision to Item 000

Schedule of Liquidated Damages



The dollar amount of daily contract administration Liquidated Damages per Working Day is \$1200.

In addition to the amount shown above, the Liquidated Damages will be increased by the amount shown in Item 8 of the General Notes for Road User Cost (RUC), when applicable.

002-009L

Special Provision to Item 2L

Instructions to Bidders



Item 2L, "Instructions to Bidders," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2L.3., "Issuing Bid Documents," second paragraph, is supplemented by the following.

The Owner will not issue a proposal form if one or more of the following apply:

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2L.13., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project.

Article 2L.7., "Nonresponsive Bid," is supplemented by the following:

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the Bidder failed to submit a DBE commitment as specified in Article 2L.13., "Disadvantaged Business Enterprise (DBE)."

Article 2L.13., "Disadvantaged Business Enterprise (DBE)," is added.

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, the apparent low bidder will be deemed nonresponsive and the proposal guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Owner may recommend:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder submits DBE information within one calendar day of notification by the Owner.

If the new apparent low Bidder is unable to submit the required DBE information within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the Bidder's guaranty will not be forfeited,
- the Owner will reject all bids, and
- the Bidder will remain eligible to receive future proposals for the same project.

006-040L

Special Provision to Item 6L

Control of Materials



Item 6L, "Control of Materials" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 1.1. "Buy America." This section is voided and replaced by the following:

- 1.1. **Buy America.** Comply with the latest provisions of Build America, Buy America Act (BABA Act) of the Bipartisan Infrastructure Law and applicable CFR, which restrict funds being made available from Federal financial assistance programs unless all the iron products, steel products, manufactured products, and construction materials used in the project are produced in the United States. Use iron or steel products, manufactured products, or construction materials produced in the United States for all permanently installed materials and products except when defined in Section 1.1.5., "Buy America Exceptions."

A material is solely classified based on its status at the time it is brought to the work site as either an iron or steel product, construction material, manufactured product, or Section 70917(c) material. Refer to the Buy America Material Classification Sheet found at <https://www.txdot.gov/business/resources/materials/buy-america-material-classification-sheet.html> for additional clarification on material classification.

- 1.1.1. **Iron or Steel.** Iron or steel products means articles, materials, or supplies that consist of iron or steel or a combination of both. For iron or steel products, manufacturing includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

For iron or steel products submit a notarized original FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance.

- 1.1.2. **Section 70917(c) Materials.** Section 70917(c) materials mean cement and cementitious material; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Section 70917(c) materials do not require domestic sourcing or Buy America certification.

- 1.1.3. **Construction Materials.** Construction materials are classified as articles, materials, or supplies that consist of only one of the items listed in bullets below. Minor additions (as determined by plans or Engineer) to any of the items listed is still a construction material.

- non-ferrous metals,
- plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables),
- glass (including optic glass),
- fiber optic cable (including drop cable),
- optical fiber,
- lumber,
- engineered wood, or
- drywall.

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For construction materials, submit a Construction Material Buy America Certification Form (Department Form 2806) for verification of compliance that all manufacturing processes, as required, occurred in the United States. Each construction material has specific certification requirements stated below. Provide additional documentation as requested.

Details shown on the plans provide additional clarification on Buy America requirements.

For non-ferrous metals, certification requires all manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

For plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), certification requires all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

For glass (including optic glass), certification requires all manufacturing processes, from initial batching and melting of raw materials through annealing, coding, and cutting, occurred in the United States.

For fiber optic cable (including drop cable), certification requires all manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

For optical fiber, certification requires all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

For lumber, certification requires all manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

For engineered wood, certification requires all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

For drywall, certification requires all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

1.1.4. **Manufactured Products.** Materials classified as a manufactured product are currently waived from Buy America requirements by an FHWA general waiver and are not required to be domestically sourced. However, iron or steel products incorporated into manufactured products must meet iron and steel compliance requirements.

1.1.5. **Buy America Exceptions.** Use of iron, steel, construction materials, and manufactured products manufactured in the United States is required unless the material meets an exception below.

- A waiver exists exempting the material from Buy America compliance.
- The total value of the non-compliant products (other than iron or steel products) is no more than the lesser of \$1,000,000 or 5% of Total Applicable Costs for the project. Total Applicable Cost means the actual cost of all materials requiring Buy America compliance including iron, steel, or other materials that are within the scope of existing waivers. Contractor must provide documentation showing under threshold in advance for Engineer's consideration.
- The total value of foreign iron and steel products, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater. Contractor must provide documentation showing under threshold in advance for Engineer's consideration.
- Foreign steel may be allowed when the Contract contains an alternate item for a foreign source iron or steel product and the Contract is awarded based on the alternate item.

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- The materials are temporarily installed or are supplies, tools and equipment not incorporated into the project. Temporarily installed means the materials and products must be removed at the end of the project or may be removed at the contractor's convenience with Engineers approval.

007-011L

Special Provision to Item 7L

Legal Relations and Responsibilities



Item 7L, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below.

Section 1.5.2., "Flaggers," the first paragraph is voided and replaced by the following:

- 1.5.2 **Flaggers.** Designate in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Certify to the Engineer that all flaggers will be trained and make available upon request a list of flaggers trained to perform flagging duties.

Section 1.5.5., "Training," is voided and replaced by the following:

- 1.5.5 **Training.** Train workers involved with the traffic control using Department-approved training as shown on the "Traffic Control Training" Material Producer List.

Coordinate enrollment, pay associated fees, and successfully complete Department-approved training or Contractor-developed training. Training is valid for the period prescribed by the provider. Except for law enforcement personnel training, refresher training is required every 4 yr. from the date of completion unless otherwise specified by the course provider. The Engineer may require training at a frequency instead of the period prescribed based on the Department's needs. Training and associated fees will not be measured or paid for directly but are considered subsidiary to pertinent Items.

Certify to the Engineer that workers involved in traffic control and other work zone personnel have been trained and make available upon request a copy of the certification of completion to the Engineer. Ensure the following is included in the certification of completion:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

Where Contractor-developed training or a Department-approved training course does not produce a certification, maintain a log of attendees. Make the log available upon request. Ensure the log is legible and includes the following:

- printed name and signature of participant,
- name and title of trainer, and
- date of training.

- 1.5.5.1. **Contractor-developed Training.** Develop and deliver Contractor-developed training meeting the minimum requirements established by the Department. The outline for this training must be submitted to the Engineer for approval at the preconstruction meeting. The CRP or designated alternate may deliver the training instead of the Department-approved training. The work performed and materials furnished to develop and deliver the training will not be measured or paid for directly but will be considered subsidiary to pertinent Items.

- 1.5.5.1.1. **Flagger Training Minimum Requirements.** A Contractor's certified flagging instructor is permitted to train other flaggers.

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- 1.5.5.1.2. **Optional Contractor-developed Training for Other Work Zone Personnel.** For other work zone personnel, the Contractor may provide training meeting the curriculum shown below instead of Department-approved training.

Minimum curriculum for Contractor-provided training is as follows:

Contractor-developed training must provide information on the use of personnel protection equipment, occupational hazards and health risks, and other pertinent topics related to traffic management. The type and amount of training will depend on the job duties and responsibilities. Develop training applicable to the work being performed. Develop training to include the following topics.

- The Life You Save May Be Your Own (or other similar company safety motto).
- Purpose of the training.
 - It's the Law.
 - To make work zones safer for workers and motorists.
 - To understand what is needed for traffic control.
 - To save lives including your own.
- Personal and Co-Worker Safety.
 - **High Visibility Safety Apparel.** Discuss compliant requirements; inspect regularly for fading and reduced reflective properties; if night operations are required, discuss the additional and appropriate required apparel in addition to special night work risks; if moving operations are underway, discuss appropriate safety measures specific to the situation and traffic control plan.
 - **Blind Areas.** A blind area is the area around a vehicle or piece of construction equipment not visible to the operators, either by line of sight or indirectly by mirrors. Discuss the "Circle of Safety" around equipment and vehicles; use of spotters; maintain eye contact with equipment operators; and use of hand signals.
 - **Runovers and Backovers.** Remain alert at all times; keep a safe distance from traffic; avoid turning your back to traffic and if you must then use a spotter; and stay behind protective barriers, whenever possible. Note: It is not safe to sit on or lean against a concrete barrier, these barriers can deflect four plus feet when struck by a vehicle.
 - Look out for each other, warn co-workers.
 - Be courteous to motorists.
 - Do not run across active roadways.
 - Workers must obey traffic laws and drive courteously while operating vehicles in the work zones.
 - Workers must be made aware of company distracted driving policies.
- **Night Time Operations.** Focus should be placed on projects with a nighttime element.
- **Traffic Control Training.** Basics of Traffic Control.
 - Identify work zone traffic control supervisor and other appropriate persons to report issues to when they arise.
 - Emphasize that work zone traffic control devices must be in clean and in undamaged condition. If devices have been hit but not damaged, put back in their correct place and report to traffic control supervisor. If devices have been damaged, replace with new one and report to traffic control supervisor. If devices are dirty, faded or have missing or damaged reflective tape clean or replace and report to traffic control supervisor. Show examples of non-acceptable device conditions. Discuss various types of traffic control devices to be used and where spacing requirements can be found.
 - **Channelizing Devices and Barricades with Slanted Stripes.** Stripes are to slant in the direction you want traffic to stay or move to; demonstrate this with a device.
 - **Traffic Queuing.** Workers must be made aware of traffic queuing and the dangers created by it. Workers must be instructed to immediately notify the traffic control supervisor and other supervisory personnel if traffic is queuing beyond advance warning sign and devices or construction limits.

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- **Signs.** Signs must be straight and not leaning. Report problems to the traffic control supervisor or other as designated for immediate repair. Covered signs must be fully covered. If covers are damaged or out of place, report to traffic control supervisor or other as designated.

Special Provision to Item 9L

Measurement and Payment



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

Section 7.1.4.3., "Standby Equipment Costs," is voided and replaced by the following:

- 7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9L.7.1.4., "Equipment." The 15% markup will be paid when standby is associated with extra work but will not be paid when standby is associated with damages.

Section 7.1.4.3.1., "Contractor-Owned Equipment," is voided and replaced by the following:

- 7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned equipment:
- Standby will be paid at 50% of the monthly Rental Rate Blue Book rate after the regional and age adjustment factors have been applied. Operating costs will not be allowed. Calculate the standby rate as follows.

Standby rate = (FHWA hourly rate - operating costs) × 50%
 - If an hourly rate is needed, divide the monthly Rental Rate Blue Book rate by 176.
 - No more than 8 hr. of standby will be paid during a 24-hr. day period, nor more than 40 hr. per week.
 - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

SPECIAL BID PROVISION

506-001L

Special Provision to Item 506

Temporary Erosion, Sedimentation, and Environmental Controls



For this project, item 506, "Temporary Erosion, Sedimentation, and Environmental Controls," of the standard specifications, is hereby voided and replaced with the following.

1. DESCRIPTION

Install, maintain, and remove erosion, sedimentation, and environmental control measures to prevent or reduce the discharge of pollutants in accordance with the Storm Water Pollution Prevention Plan (SWP3) in the plans and the Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR150000.

2. MATERIALS

Furnish materials in accordance with the following:

- Item 161, "Compost"
- Item 432, "Riprap"
- Item 556, "Pipe Underdrains"

2.1. Rock Filter Dams.

2.1.1. **Aggregate.** Furnish aggregate with hardness, durability, cleanliness, and resistance to crumbling, flaking, and eroding acceptable to the Owner. Provide the following:

- Types 1, 2, and 4 Rock Filter Dams. Use 3 to 6 in. aggregate.
- Type 3 Rock Filter Dams. Use 4 to 8 in. aggregate.

2.1.2. **Wire.** Provide minimum 20 gauge galvanized wire for the steel wire mesh and tie wires for Types 2 and 3 rock filter dams. Type 4 dams require:

- a double-twisted, hexagonal weave with a nominal mesh opening of 2-1/2 in. x 3-1/4 in.;
- minimum 0.0866 in. steel wire for netting;
- minimum 0.1063 in. steel wire for selvages and corners; and
- minimum 0.0866 in. for binding or tie wire.

2.1.3. **Sandbag Material.** Furnish sandbags meeting Section 506.2.8., "Sandbags," except that any gradation of aggregate may be used to fill the sandbags.

2.2. **Temporary Pipe Slope Drains.** Provide corrugated metal pipe, polyvinyl chloride (PVC) pipe, flexible tubing, watertight connection bands, grommet materials, prefabricated fittings, and flared entrance sections that conform to the plans. Recycled and other materials meeting these requirements are allowed if approved.

Furnish concrete in accordance with Item 432, "Riprap."

2.3. **Temporary Paved Flumes.** Furnish asphalt concrete, hydraulic cement concrete, or other comparable non-erodible material that conforms to the plans. Provide rock or rubble with a minimum diameter of 6 in. and a maximum volume of 1/2 cu. ft. for the construction of energy dissipaters.

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- 2.4. **Construction Exits.** Provide materials that meet the details shown on the plans and this Section.
- 2.4.1. **Rock Construction Exit.** Provide crushed aggregate for long- and short-term construction exits. Furnish aggregates that are clean, hard, durable, and free from adherent coatings such as salt, alkali, dirt, clay, loam, shale, soft or flaky materials, and organic and injurious matter. Use 4- to 8-in. aggregate for Type 1. Use 2- to 4-in. aggregate for Type 3.
- 2.4.2. **Timber Construction Exit.** Furnish No. 2 quality or better railroad ties and timbers for long-term construction exits, free of large and loose knots and treated to control rot. Fasten timbers with nuts and bolts or lag bolts, of at least 1/2 in. diameter, unless otherwise shown on the plans or allowed. Provide plywood or pressed wafer board at least 1/2 in. thick for short-term exits.
- 2.4.3. **Foundation Course.** Provide a foundation course consisting of flexible base, bituminous concrete, hydraulic cement concrete, or other materials as shown on the plans or directed.
- 2.5. **Embankment for Erosion Control.** Provide rock, loam, clay, topsoil, or other earth materials that will form a stable embankment to meet the intended use.
- 2.6. **Pipe.** Provide pipe outlet material in accordance with Item 556, "Pipe Underdrains," and details shown on the plans.
- 2.7. **Construction Perimeter Fence.**
- 2.7.1. **Posts.** Provide essentially straight wood or steel posts that are at least 60 in. long. Furnish soft wood posts with a minimum diameter of 3 in., or use nominal 2 × 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 × 1-1/5 in. Furnish T- or L-shaped steel posts with a minimum weight of 0.5 lb. per foot.
- 2.7.2. **Fence.** Provide orange construction fencing as approved.
- 2.7.3. **Fence Wire.** Provide 11 gauge or larger galvanized smooth or twisted wire. Provide 16 gauge or larger tie wire.
- 2.7.4. **Flagging.** Provide brightly-colored flagging that is fade-resistant and at least 3/4 in. wide to provide maximum visibility both day and night.
- 2.7.5. **Staples.** Provide staples with a crown at least 1/2 in. wide and legs at least 1/2 in. long.
- 2.7.6. **Used Materials.** Previously used materials meeting the applicable requirements may be used if approved.
- 2.8. **Sandbags.** Provide sandbag material of polypropylene, polyethylene, or polyamide woven fabric with a minimum unit weight of 4 oz. per square yard, a Mullen burst-strength exceeding 300 psi, and an ultraviolet stability exceeding 70%.

Use natural coarse sand or manufactured sand meeting the gradation given in Table 1 to fill sandbags. Filled sandbags must be 24 to 30 in. long, 16 to 18 in. wide, and 6 to 8 in. thick.

Table 1
Sand Gradation

Sieve #	Retained (% by Weight)
4	Maximum 3%
100	Minimum 80%
200	Minimum 95%

Aggregate may be used instead of sand for situations where sandbags are not adjacent to traffic. The aggregate size shall not exceed 3/8 in.

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- 2.9. **Temporary Sediment Control Fence.** Provide a net-reinforced fence using woven geo-textile fabric. Logos visible to the traveling public will not be allowed.
- 2.9.1. **Fabric.** Provide fabric materials in accordance with DMS-6230, "Temporary Sediment Control Fence Fabric."
- 2.9.2. **Posts.** Provide essentially straight wood or steel posts with a minimum length of 48 in., unless otherwise shown on the plans. Furnish soft wood posts at least 3 in. in diameter, or use nominal 2 x 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 x 1-1/2 in. Furnish T- or L-shaped steel posts with a minimum weight of 1.3 lb. per foot.
- 2.9.3. **Net Reinforcement.** Provide net reinforcement of at least 12-1/2 gauge galvanized welded wire mesh, with a maximum opening size of 2 x 4 in., at least 24 in. wide, unless otherwise shown on the plans.
- 2.9.4. **Staples.** Provide staples with a crown at least 3/4 in. wide and legs 1/2 in. long.
- 2.9.5. **Used Materials.** Use recycled material meeting the applicable requirements if approved.
- 2.10. **Biodegradable Erosion Control Logs.**
- 2.10.1. **Core Material.** Furnish core material that is biodegradable or recyclable. Use compost, mulch, aspen excelsior wood fibers, chipped site vegetation, agricultural rice or wheat straw, coconut fiber, 100% recyclable fibers, or any other acceptable material unless specifically called out on the plans. Permit no more than 5% of the material to escape from the containment mesh. Furnish compost meeting the requirements of Item 161, "Compost."
- 2.10.2. **Containment Mesh.** Furnish containment mesh that is 100% biodegradable, photodegradable, or recyclable such as burlap, twine, UV photodegradable plastic, polyester, or any other acceptable material.

Furnish biodegradable or photodegradable containment mesh when log will remain in place as part of a vegetative system.

Furnish recyclable containment mesh for temporary installations.
- 2.10.3. **Size.** Furnish biodegradable erosion control logs with diameters shown on the plans or as directed. Stuff containment mesh densely so logs do not deform.

3. CONSTRUCTION

- 3.1. **Contractor Responsibilities.** Implement the Owner's Storm Water Pollution Prevention Plan (SWP3) for the project in accordance with the plans and specifications, TPDES General Permit TXR150000, and as directed by the Owner. Develop and implement an SWP3 for project-specific material supply plants within and outside of the Owner's right of way in accordance with the specific or general storm water permit requirements. Prevent water pollution from storm water associated with construction activity from entering any surface water or private property on or adjacent to the project site.
- 3.2. **General.**
- 3.2.1. **Phasing.** Implement control measures in the area to be disturbed before beginning construction, or as directed. Limit the disturbance to the area shown on the plans or as directed. If, in the opinion of the Owner, the Contractor cannot control soil erosion and sedimentation resulting from construction operations, the Owner will limit the disturbed area to that which the Contractor is able to control. Minimize disturbance to vegetation.
- 3.2.2. **Maintenance.** Immediately correct ineffective control measures. Implement additional controls as directed. Remove excavated material within the time requirements specified in the applicable storm water permit.

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- 3.2.3. **Stabilization.** Stabilize disturbed areas where construction activities will be temporarily stopped in accordance with the applicable storm water permit. Establish a uniform vegetative cover. The project will not be accepted until a 70% density of existing adjacent undisturbed areas is obtained, unless otherwise shown on the plans. When shown on the plans, the Owner may accept the project when adequate controls are in place that will control erosion, sedimentation, and water pollution until sufficient vegetative cover can be established.
- 3.2.4. **Finished Work.** Upon acceptance of vegetative cover, remove and dispose of all temporary control measures, temporary embankments, bridges, matting, falsework, piling, debris, or other obstructions placed during construction that are not a part of the finished work, or as directed.
- 3.2.5. **Restricted Activities and Required Precautions.** Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens, or any other petroleum product. Operate and maintain equipment on-site to prevent actual or potential water pollution. Manage, control, and dispose of litter on-site such that no adverse impacts to water quality occur. Prevent dust from creating a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property. Wash out concrete trucks only as described in the TPDES General Permit TXR150000. Utilize appropriate controls to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water (i.e. dewatering). Prevent discharges that would contribute to a violation of Edwards Aquifer Rules, water quality standards, the impairment of a listed water body, or other state or federal law.
- 3.3. **Installation, Maintenance, and Removal Work.** Perform work in accordance with the SWP3, according to manufacturers' guidelines, and in accordance with the TPDES General Permit TXR150000. Install and maintain the integrity of temporary erosion and sedimentation control devices to accumulate silt and debris until soil disturbing activities are completed and permanent erosion control features are in place or the disturbed area has been adequately stabilized as determined by the Owner. . If a device ceases to function as intended, repair or replace the device or portions thereof as necessary. Remove sediment, debris, and litter. When approved, sediments may be disposed of within embankments, or in the right of way in areas where the material will not contribute to further siltation. Dispose of removed material in accordance with federal, state, and local regulations.
- Remove devices upon approval or as directed. Finish-grade and dress the area upon removal. Stabilize disturbed areas in accordance with the permit, and as shown on the plans or directed. Materials removed are considered consumed by the project. Retain ownership of stockpiled material and remove it from the project when new installations or replacements are no longer required.
- 3.3.1. **Rock Filter Dams for Erosion Control.** Remove trees, brush, stumps, and other objectionable material that may interfere with the construction of rock filter dams. Place sandbags as a foundation when required or at the Contractor's option.
- Place the aggregate to the lines, height, and slopes specified, without undue voids for Types 1, 2, 3, and 5. Place the aggregate on the mesh and then fold the mesh at the upstream side over the aggregate and secure it to itself on the downstream side with wire ties, or hog rings for Types 2 and 3, or as directed. Place rock filter dams perpendicular to the flow of the stream or channel unless otherwise directed. Construct filter dams according to the following criteria unless otherwise shown on the plans:
- 3.3.1.1. **Type 1 (Non-reinforced).**
- 3.3.1.1.1. **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
- 3.3.1.1.2. **Top Width.** At least 2 ft.
- 3.3.1.1.3. **Slopes.** No steeper than 2:1.
- 3.3.1.2. **Type 2 (Reinforced).**

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- 3.3.1.2.1. **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
- 3.3.1.2.2. **Top Width.** At least 2 ft.
- 3.3.1.2.3. **Slopes.** No steeper than 2:1.
- 3.3.1.3. **Type 3 (Reinforced).**
 - 3.3.1.3.1. **Height.** At least 36 in. measured vertically from existing ground to top of filter dam.
 - 3.3.1.3.2. **Top Width.** At least 2 ft.
 - 3.3.1.3.3. **Slopes.** No steeper than 2:1.
- 3.3.1.4. **Type 4 (Sack Gabions).** Unfold sack gabions and smooth out kinks and bends. Connect the sides by lacing in a single loop-double loop pattern on 4- to 5-in. spacing for vertical filling. Pull the end lacing rod at one end until tight, wrap around the end, and twist 4 times. Fill with stone at the filling end, pull the rod tight, cut the wire with approximately 6 in. remaining, and twist wires 4 times.

Place the sack flat in a filling trough, fill with stone, connect sides, and secure ends as described above for horizontal filling.

Lift and place without damaging the gabion. Shape sack gabions to existing contours.
- 3.3.1.5. **Type 5.** Provide rock filter dams as shown on the plans.
- 3.3.2. **Temporary Pipe Slope Drains.** Install pipe with a slope as shown on the plans or as directed. Construct embankment for the drainage system in 8-in. lifts to the required elevations. Hand-tamp the soil around and under the entrance section to the top of the embankment as shown on the plans or as directed. Form the top of the embankment or earth dike over the pipe slope drain at least 1 ft. higher than the top of the inlet pipe at all points. Secure the pipe with hold-downs or hold-down grommets spaced a maximum of 10 ft. on center. Construct the energy dissipaters or sediment traps as shown on the plans or as directed. Construct the sediment trap using concrete or rubble riprap in accordance with Item 432, "Riprap," when designated on the plans.
- 3.3.3. **Temporary Paved Flumes.** Construct paved flumes as shown on the plans or as directed. Provide excavation and embankment (including compaction of the subgrade) of material to the dimensions shown on the plans unless otherwise indicated. Install a rock or rubble riprap energy dissipater, constructed from the materials specified above, to a minimum depth of 9 in. at the flume outlet to the limits shown on the plans or as directed.
- 3.3.4. **Construction Exits.** Prevent traffic from crossing or exiting the construction site or moving directly onto a public roadway, alley, sidewalk, parking area, or other right of way areas other than at the location of construction exits when tracking conditions exist. Construct exits for either long- or short-term use.
 - 3.3.4.1. **Long-Term.** Place the exit over a foundation course as required. Grade the foundation course or compacted subgrade to direct runoff from the construction exits to a sediment trap as shown on the plans or as directed. Construct exits with a width of at least 14 ft. for one-way and 20 ft. for two-way traffic for the full width of the exit, or as directed.
 - 3.3.4.1.1. **Type 1.** Construct to a depth of at least 8 in. using crushed aggregate as shown on the plans or as directed.
 - 3.3.4.1.2. **Type 2.** Construct using railroad ties and timbers as shown on the plans or as directed.
 - 3.3.4.2. **Short-Term.**

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- 3.3.4.2.1. **Type 3.** Construct using crushed aggregate, plywood, or wafer board. This type of exit may be used for daily operations where long-term exits are not practical.
- 3.3.4.2.2. **Type 4.** Construct as shown on the plans or as directed.
- 3.3.5. **Earthwork for Erosion Control.** Perform excavation and embankment operations to minimize erosion and to remove collected sediments from other erosion control devices.
- 3.3.5.1. **Excavation and Embankment for Erosion Control Features.** Place earth dikes, swales, or combinations of both along the low crown of daily lift placement, or as directed, to prevent runoff spillover. Place swales and dikes at other locations as shown on the plans or as directed to prevent runoff spillover or to divert runoff. Construct cuts with the low end blocked with undisturbed earth to prevent erosion of hillsides. Construct sediment traps at drainage structures in conjunction with other erosion control measures as shown on the plans or as directed.
- Create a sediment basin, where required, providing 3,600 cu. ft. of storage per acre drained, or equivalent control measures for drainage locations that serve an area with 10 or more disturbed acres at one time, not including offsite areas.
- 3.3.5.2. **Excavation of Sediment and Debris.** Remove sediment and debris when accumulation affects the performance of the devices, after a rain, and when directed.
- 3.3.6. **Construction Perimeter Fence.** Construct, align, and locate fencing as shown on the plans or as directed.
- 3.3.6.1. **Installation of Posts.** Embed posts 18 in. deep or adequately anchor in rock, with a spacing of 8 to 10 ft.
- 3.3.6.2. **Wire Attachment.** Attach the top wire to the posts at least 3 ft. from the ground. Attach the lower wire midway between the ground and the top wire.
- 3.3.6.3. **Flag Attachment.** Attach flagging to both wire strands midway between each post. Use flagging at least 18 in. long. Tie flagging to the wire using a square knot.
- 3.3.7. **Sandbags for Erosion Control.** Construct a berm or dam of sandbags that will intercept sediment-laden storm water runoff from disturbed areas, create a retention pond, detain sediment, and release water in sheet flow. Fill each bag with sand so that at least the top 6 in. of the bag is unfilled to allow for proper tying of the open end. Place the sandbags with their tied ends in the same direction. Offset subsequent rows of sandbags 1/2 the length of the preceding row. Place a single layer of sandbags downstream as a secondary debris trap. Place additional sandbags as necessary or as directed for supplementary support to berms or dams of sandbags or earth.
- 3.3.8. **Temporary Sediment-Control Fence.** Provide temporary sediment-control fence near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the fence into erosion-control measures used to control sediment in areas of higher flow. Install the fence as shown on the plans, as specified in this Section, or as directed.
- 3.3.8.1. **Installation of Posts.** Embed posts at least 18 in. deep, or adequately anchor, if in rock, with a spacing of 6 to 8 ft. and install on a slight angle toward the runoff source.
- 3.3.8.2. **Fabric Anchoring.** Dig trenches along the uphill side of the fence to anchor 6 to 8 in. of fabric. Provide a minimum trench cross-section of 6 × 6 in. Place the fabric against the side of the trench and align approximately 2 in. of fabric along the bottom in the upstream direction. Backfill the trench, then hand-tamp.
- 3.3.8.3. **Fabric and Net Reinforcement Attachment.** Attach the reinforcement to wooden posts with staples, or to steel posts with T-clips, in at least 4 places equally spaced unless otherwise shown on the plans. Sewn vertical pockets may be used to attach reinforcement to end posts. Fasten the fabric to the top strand of reinforcement by hog rings or cord every 15 in. or less.

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- 3.3.8.4. **Fabric and Net Splices.** Locate splices at a fence post with a minimum lap of 6 in. attached in at least 6 places equally spaced unless otherwise shown on the plans. Do not locate splices in concentrated flow areas.

Requirements for installation of used temporary sediment-control fence include the following:

- fabric with minimal or no visible signs of biodegradation (weak fibers),
- fabric without excessive patching (more than 1 patch every 15 to 20 ft.),
- posts without bends, and
- backing without holes.

- 3.3.9. **Biodegradable Erosion Control Logs.** Install biodegradable erosion control logs near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the biodegradable erosion control logs into the erosion measures used to control sediment in areas of higher flow. Install, align, and locate the biodegradable erosion control logs as specified below, as shown in plans or as directed.

Secure biodegradable erosion control logs in a method adequate to prevent displacement as a result of normal rain events, prevent damage to the logs, and to the satisfaction of the Owner such that flow is not allowed under the logs. Temporarily removing and replacing biodegradable erosion logs as to facilitate daily work is allowed at the Contractor's expense.

- 3.3.10. **Vertical Tracking.** Perform vertical tracking on slopes to temporarily stabilize soil. Provide equipment with a track undercarriage capable of producing a linear soil impression measuring a minimum of 12 in. long × 2 to 4 in. wide × 1/2 to 2 in. deep. Do not exceed 12 in. between track impressions. Install continuous linear track impressions where the 12 in. length impressions are perpendicular to the slope. Vertical tracking is required on projects where soil disturbing activities have occurred unless otherwise approved.

4. MEASUREMENT

- 4.1. **Rock Filter Dams.** Installation or removal of rock filter dams will be measured by the foot or by the cubic yard. The measured volume will include sandbags, when used.
- 4.1.1. **Linear Measurement.** When rock filter dams are measured by the foot, measurement will be along the centerline of the top of the dam.
- 4.1.2. **Volume Measurement.** When rock filter dams are measured by the cubic yard, measurement will be based on the volume of rock computed by the method of average end areas.
- 4.1.2.1. **Installation.** Measurement will be made in final position.
- 4.1.2.2. **Removal.** Measurement will be made at the point of removal.
- 4.2. **Temporary Pipe Slope Drains.** Temporary pipe slope drains will be measured by the foot.
- 4.3. **Temporary Paved Flumes.** Temporary paved flumes will be measured by the square yard of surface area. The measured area will include the energy dissipater at the flume outlet.
- 4.4. **Construction Exits.** Construction exits will be measured by the square yard of surface area.
- 4.5. **Earthwork for Erosion and Sediment Control.**
- 4.5.1. **Equipment and Labor Measurement.** Equipment and labor used will be measured by the actual number of hours the equipment is operated and the labor is engaged in the work.
- 4.5.2. **Volume Measurement.**

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- 4.5.2.1. **In Place.**
- 4.5.2.1.1. **Excavation.** Excavation will be measured by the cubic yard in its original position and the volume computed by the method of average end areas.
- 4.5.2.1.2. **Embankment.** Embankment will be measured by the cubic yard in its final position by the method of average end areas. The volume of embankment will be determined between:
- the original ground surfaces or the surface upon that the embankment is to be constructed for the feature and
 - the lines, grades and slopes of the accepted embankment for the feature.
- 4.5.2.2. **In Vehicles.** Excavation and embankment quantities will be combined and paid for under "Earthwork (Erosion and Sediment Control, In Vehicle)." Excavation will be measured by the cubic yard in vehicles at the point of removal. Embankment will be measured by the cubic yard in vehicles measured at the point of delivery. Shrinkage or swelling factors will not be considered in determining the calculated quantities.
- 4.6. **Construction Perimeter Fence.** Construction perimeter fence will be measured by the foot.
- 4.7. **Sandbags for Erosion Control.** Sandbags will be measured as each sandbag or by the foot along the top of sandbag berms or dams.
- 4.8. **Temporary Sediment-Control Fence.** Installation or removal of temporary sediment-control fence will be measured by the foot.
- 4.9. **Biodegradable Erosion Control Logs.** Installation or removal of biodegradable erosion control logs will be measured by the foot along the centerline of the top of the control logs.
- 4.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

5. PAYMENT

The following will not be paid for directly but are subsidiary to pertinent Items:

- erosion-control measures for Contractor project-specific locations (PSLs) inside and outside the right of way (such as construction and haul roads, field offices, equipment and supply areas, plants, and material sources);
- removal of litter, unless a separate pay item is shown on the plans;
- repair to devices and features damaged by Contractor operations;
- added measures and maintenance needed due to negligence, carelessness, lack of maintenance, and failure to install permanent controls;
- removal and reinstallation of devices and features needed for the convenience of the Contractor;
- finish grading and dressing upon removal of the device; and
- minor adjustments including but not limited to plumbing posts, reattaching fabric, minor grading to maintain slopes on an erosion embankment feature, or moving small numbers of sandbags.

Stabilization of disturbed areas will be paid for under pertinent Items.

Furnishing and installing pipe for outfalls associated with sediment traps and ponds will not be paid for directly but is subsidiary to the excavation and embankment under this Item.

- 5.1. **Rock Filter Dams.** 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 as follows:

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- 5.1.1. **Installation.** Installation will be paid for as "Rock Filter Dams (Install)" of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.
- 5.1.2. **Removal.** Removal will be paid for as "Rock Filter Dams (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- When the Owner directs that the rock filter dam installation or portions thereof be replaced, payment will be made at the unit price bid for "Rock Filter Dams (Remove)" and for "Rock Filter Dams (Install)" of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.
- 5.2. **Temporary Pipe Slope Drains.** 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 "Temporary Pipe Slope Drains" of the size specified. This price is full compensation for furnishing materials, removal and disposal, furnishing and operating equipment, labor, tools, and incidentals.
- Removal of temporary pipe slope drains will not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the pipe slope drain installation or portions thereof be replaced, payment will be made at the unit price bid for "Temporary Pipe Slope Drains" of the size specified, which is full compensation for the removal and reinstallation of the pipe drain.
- Earthwork required for the pipe slope drain installation, including construction of the sediment trap, will be measured and paid for under "Earthwork for Erosion and Sediment Control."
- Riprap concrete or stone, when used as an energy dissipater or as a stabilized sediment trap, will be measured and paid for in accordance with Item 432, "Riprap."
- 5.3. **Temporary Paved Flumes.** 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 "Temporary Paved Flume (Install)" or "Temporary Paved Flume (Remove)." This price is full compensation for furnishing and placing materials, removal and disposal, equipment, labor, tools, and incidentals.
- When the Owner directs that the paved flume installation or portions thereof be replaced, payment will be made at the unit prices bid for "Temporary Paved Flume (Remove)" and "Temporary Paved Flume (Install)." These prices are full compensation for the removal and replacement of the paved flume and for equipment, labor, tools, and incidentals.
- Earthwork required for the paved flume installation, including construction of a sediment trap, will be measured and paid for under "Earthwork for Erosion and Sediment Control."
- 5.4. **Construction Exits.** Contractor-required construction exits from off right of way locations or on-right of way PSUs will not be paid for directly but are subsidiary to pertinent Items.
- The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" for construction exits needed on right of way access to work areas required by the Owner will be paid for at the unit price bid for "Construction Exits (Install)" of the type specified or "Construction Exits (Remove)." This price is full compensation for furnishing and placing materials, excavating, removal and disposal, cleaning vehicles, labor, tools, and incidentals.
- When the Owner directs that a construction exit or portion thereof be removed and replaced, payment will be made at the unit prices bid for "Construction Exit (Remove)" and "Construction Exit (Install)" of the type specified. These prices are full compensation for the removal and replacement of the construction exit and for equipment, labor, tools, and incidentals.

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Construction of sediment traps used in conjunction with the construction exit will be measured and paid for under "Earthwork for Erosion and Sediment Control."

5.5. **Earthwork for Erosion and Sediment Control.**

- 5.5.1. **Initial Earthwork for Erosion and Sediment Control.** 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 "Excavation (Erosion and Sediment Control, In Place)," "Embankment (Erosion and Sediment Control, In Place)," "Excavation (Erosion and Sediment Control, In Vehicle)," "Embankment (Erosion and Sediment Control, In Vehicle)," or "Earthwork (Erosion and Sediment Control, In Vehicle)."

This price is full compensation for excavation and embankment including hauling, disposal of material not used elsewhere on the project; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Sprinkling and rolling required by this Item will not be paid for directly, but will be subsidiary to this Item.

- 5.5.2. **Maintenance Earthwork for Erosion and Sediment Control for Cleaning and Restoring Control Measures.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid under a Contractor Force Account Item from invoice provided to the Owner.

This price is full compensation for excavation, embankment, and re-grading including removal of accumulated sediment in various erosion control installations as directed, hauling, and disposal of material not used elsewhere on the project; excavation for construction of erosion-control features; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Earthwork needed to remove and obliterate erosion-control features will not be paid for directly but is subsidiary to pertinent Items unless otherwise shown on the plans.

Sprinkling and rolling required by this Item will not be paid for directly, but will be subsidiary to this Item.

- 5.6. **Construction Perimeter Fence.** 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 "Construction Perimeter Fence." This price is full compensation for furnishing and placing the fence; digging, fence posts, wire, and flagging; removal and disposal; and materials, equipment, labor, tools, and incidentals.

Removal of construction perimeter fence will not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the perimeter fence installation or portions thereof be removed and replaced, payment will be made at the unit price bid for "Construction Perimeter Fence," which is full compensation for the removal and reinstallation of the construction perimeter fence.

- 5.7. **Sandbags for Erosion Control.** Sandbags will be paid for at the unit price bid for "Sandbags for Erosion Control" (of the height specified when measurement is by the foot). This price is full compensation for materials, placing sandbags, removal and disposal, equipment, labor, tools, and incidentals.

Removal of sandbags will not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the sandbag installation or portions thereof be replaced, payment will be made at the unit price bid for "Sandbags for Erosion Control," which is full compensation for the reinstallation of the sandbags.

- 5.8. **Temporary Sediment-Control Fence.** 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 as follows:

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- 5.8.1. **Installation.** Installation will be paid for as "Temporary Sediment-Control Fence (Install)." This price is full compensation for furnishing and operating equipment finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.
- 5.8.2. **Removal.** Removal will be paid for as "Temporary Sediment-Control Fence (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 5.9. **Biodegradable Erosion Control Logs.** 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 as follows:
- 5.9.1. **Installation.** Installation will be paid for as "Biodegradable Erosion Control Logs (Install)" of the size specified. This price is full compensation for furnishing and operating equipment finish backfill and grading, staking, proper disposal, labor, materials, tools, and incidentals.
- 5.9.2. **Removal.** Removal will be paid for as "Biodegradable Erosion Control Logs (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 5.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

SECTION B

CONTINUED

SUPPLEMENTAL BID CONDITIONS

SUPPLEMENTAL BID CONDITIONS

FEDERAL REQUIREMENTS

1. ADOPTION OF TxDOT POLICY AND PROCEDURES

For the purpose of the contract the City of New Braunfels adopts and incorporates the following TxDOT procedures:

- Equal Employment Opportunity
- Prison Produced Materials
- Equipment Rental Rates
- Subcontracting
- TxDOT Quality Assurance Program

All required federal EEO special provisions must also be physically included in all subcontract/purchase order agreements of \$10,000 or greater.

2. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the Company to assure that applicants are employed, and that employees are treated during employment without regard to their race, religion, sex, color, or national origin, 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.

3. PRISON PRODUCED MATERIALS

Convict produced materials are not allowed. Refer to Section D, Exhibit 12 – Statement on Convict Produced Materials & Convict Labor. There are limitations on using materials by convict labor in a Federal-aid Highway project. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if:

- Such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or
- Such material has been produced in a qualified prison facility (e.g. prison industry, with the amount produced during any 12- month period) for use in Federal-aid project, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987. Texas does not have a qualified prison facility meeting the requirements of the regulation.

4. EQUIPMENT RENTAL RATES

The City of New Braunfels has opted for this project to use TxDOT specification for equipment rental rates.

5. SUBCONTRACTING

The City of New Braunfels has opted for this project to use TxDOT standard specification Article 8L.2 for subcontracting.

6. TxDOT QUALITY ASSURANCE PROGRAM

The City of New Braunfels has opted for this project to use TxDOT's quality assurance program.

7. CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or Business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this

contract may be terminated, and payment may be withheld if this certification is inaccurate. Refer to Section D, Exhibit 7. Child Support Statement and Form.

8. PREVAILING WAGES

Bidder's must comply with all requirements of the prevailing wage Statue 2258 for non-Federal contracts and Davis-Bacon and Related Acts for federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

Wages shall be paid in accordance with the Davis Bacon Wage Rates.

Refer to Section D, Exhibit 4 - Prevailing Wage Schedule

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

9. ANTI-LOBBYING AND PROCUREMENT (Certification)

Lobbying activities or representations by the Bidder are prohibited between the date that the Invitation for Bid (IFB) is issued and the date of contract execution. During a no-contact period, a bidder shall make a representation only through the authorized contact person.

During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.

The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

10. BID REQUIREMENTS

10.1 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All Bids will remain subject to acceptance for one hundred and twenty days (120) after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

10.2 PROJECT SCHEDULE

DATE	MILESTONE
April 19, 2024	IFB – Posted at: <ul style="list-style-type: none">- the BidNet Direct website, http://www.bidnetdirect.com/texas- the City of New Braunfels' website https://newbraunfels.gov/2694/Solicitations
May 3, 2024, at 10 am	Non-Mandatory Pre-Bid Meeting with Site Visit (See page 5 for virtual link)
May 6, 2024, 5 pm	Deadline for questions and requests for clarification (Addenda)
May 16, 2024, 3 pm	Invitation for Bid (IFB) submission deadline. Bids will be read aloud at City Hall and virtually, see page 5 for virtual link.
June 2024	Approval & Award of Contract by City Council
TBD	Estimated Construction Start Date

10.3 DAYS TO ACHIEVE SUBSTANTIAL COMPLETION AND FINAL PAYMENT

The work will be substantially completed within 120 working days after the date when the Contract Times commence to run as provided in Item 3L.8 and completed and ready for final payment in accordance with Item 5L.12 within 150 working days after the date when the Contract Times commence to run. Working days are defined in Item 8L.3.1.4 Five-Day Workweek.

10.4 INDEMNITY AGAINST LOSS

- A. Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of the contractor, its employees, subcontractors, agents and consultants for the accuracy and competency of their supplies, equipment, or services provided hereunder; nor shall such approval be deemed to be an assumption of such responsibility by City of New Braunfels for any defect, error or omission in the supplies, equipment, or services provided by the contractor, its employees, subcontractors, agents and consultants. Contractor shall indemnify, hold harmless and defend City of New Braunfels, their officers, agents and employees from any loss, damage, liability or expense, including reasonable attorney's fees, on account of damage to property and injuries, including death, to all persons, including employees of the contractor or any of its consultants, which may arise from any negligent act, error or omission, on the part of the contractor, its employees, agents, and consultants, pursuant to this contract.
- B. The City does not assume any liability to third persons, nor will the City reimburse the Contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and Contractor further agrees to provide the defense for, and indemnify and hold harmless City from any and all claims, suits, causes of action, and liability, arising in connection with this contract.

11. SALES TAX

The Bidder shall investigate all statutory requirements for the payment of sales taxes and shall include the cost of any such payments in the Bid prices of his bid.

The Bidder's attention is directed to Chapter 151 of the Tax Code of the State of Texas. This section provides that all items used or consumed in direct pursuance of this Contract can be purchased free of State of Owner sales tax since the project is being performed for an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas.

12. RELEASE OF INFORMATION

Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the bid evaluation process or prior to contract award, except as otherwise required by law.

13 CERTIFICATE OF INTERESTED PARTIES (FORM 1295) – Exhibit

Section 2252.908 is an ethics law that was enacted by H.B. 1295. It prohibits a governmental entity or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties.

The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Filing Process: The commission made available on its website a filing application that must be used to file Form 1295. A business entity must enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the City. Go to the Ethics Commission's Website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and complete the "Interested Parties" information. Include the City's Solicitation number.

14 CONTRACTS WITH COMPANIES THAT BOYCOTT ENERGY COMPANIES

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

15 CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM INDUSTRY

Contractor verifies that 1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; or 2) the verification required by Section 2274 002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least 100 000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

16 CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Contractor certifies in Exhibit 4, "Vendor Certifications", it has not boycotted Israel currently and will not boycott Israel during the term of the contract, pursuant to Chapter 2271, Texas Government Code.

THIS AGREEMENT is dated as of the _____ day of _____ of the year 2024 by and between CITY OF NEW BRAUNFELS (Owner) and _____ (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in or reasonably inferable from the Contract Documents as listed below and hereinafter the "Work":

**The Contract Agreement
Project Manual
General Conditions and Supplemental Conditions of Agreement
TxDOT Local Government Project Procedures documents
TxDOT Special Provisions
Instructions to Bidders and CONTRACTOR'S Bid Proposal, including any Addenda
Any other documents used— Appendices, Exhibits, Special Conditions, Technical Specifications, etc.
Payment Bond, Performance Bond and Warranty Bond (not require for this project)
Plans and Technical Specifications for the Work**

1.02 The Work is generally described as follows:

**Common Street Pedestrian Improvements – CSJ 0915-17-076
RFB 24-018**

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Common Street Pedestrian Improvements – CSJ 0915-17-076

The Disadvantaged Business Enterprise (DBE) goal for this project is 6%.
DBEs selected must be TxDOT approved. Race neutral participation is encouraged and can be achieved through various supplier and subcontracting opportunities.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

**Ashish Ghosh, P.E.
The Goodman Corporation
3200 Travis Street, Ste 200
Houston, TX 77006
713-951-7951**

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIME

4.01 *Time of the Essence*

A. Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time

is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The work will be substantially completed within **120** working days (as defined in 8L 3.1) after the date when the Contract Time commence to run as provided in Item 3L.8 and completed and ready for final payment in accordance with Item 5L.12 within **150** working days after the date when the Contract Times commence to run. No work will be allowed on the City Holidays or weekends. *[The substantial completion schedule will be further defined with this contract.]*

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with General Condition 8L.6 and SP 000-1243L of the Project Manual. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **(\$1200.00)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **(\$1200.00)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

4.05 *Claims for Additional Time*

A. Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Rain days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rain days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of rain days per calendar month is as follows, based upon regional weather data from the National Weather Service or NOAA:

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement.

B. Requests for an extension of time pursuant to this subsection shall be promptly submitted to Owners. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds \$_____, the contract price.

The Contract Price includes the Base Bid for *all Work, at the prices stated in Contractor's Bid Form, attached hereto as Exhibit 1.*

ARTICLE 6 – RETAINAGE

6.01 The owner will retain five percent (5%) retainage of each application for Payment from the Contractor. Upon Final Completion of the work, the retainage shall be released.

ARTICLE 7 - PAYMENT PROCEDURES

7.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with 9L.5. of the General Conditions and Supplemental Conditions (if applicable). Contractor delivers to Owner a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

Applications for Payment will be processed by Engineer as provided in the General Conditions.

7.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owners may withhold, including but not limited to liquidated damages.
 - a. 95% (percent) of Work completed.
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

7.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 8 – CLAIMS PROCESS

Refer to the City's General Conditions, Article 10 – Changes in the Work; Claims, Article 12 Change in Time attached here as Appendix 2 and as provided in the City Project Manual (attachment 1 to the bid).

ARTICLE 9 – CONTRACTOR'S REPRESENTATIONS

9.01 To induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Governing Law*

A. The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

10.06 *Venue*

A. This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this contract shall be in the District Courts of Comal County, Texas.

10.07 *Prohibition on Contracts with Companies Boycotting Israel*

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. [USE IN LIEU OF THE PREVIOUS SENTENCE IF THE CONTRACTOR IS EXEMPT FROM THE ISRAEL BOYCOTT REQUIREMENT—The Contractor hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended.] The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

10.08 *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited*

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

10.09 *Indemnity Against Loss*

A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY OF NEW BRAUNFELS AND NEW BRAUNFELS UTILITIES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY’S FEES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ALL PERSONS, INCLUDING EMPLOYEES OF THE CONTRACTOR OR ANY OF ITS CONSULTANTS, WHICH MAY ARISE FROM ANY NEGLIGENT ACT, ERROR OR OMISSION, ON THE PART OF THE CONTRACTOR, ITS EMPLOYEES, AGENTS, AND CONSULTANTS, PURSUANT TO THIS CONTRACT.

B. THE OWNERS DO NOT ASSUME ANY LIABILITY TO THIRD PERSONS, NOR WILL THE OWNERS REIMBURSE THE CONTRACTOR FOR ITS LIABILITY TO A THIRD PERSON, WITH RESPECT TO LOSS DUE TO DEATH, BODILY INJURY, OR DAMAGE TO PROPERTY RESULTING

IN ANY WAY FROM THE PERFORMANCE OF THIS CONTRACT OR ANY SUBCONTRACT HEREUNDER, AND CONTRACTOR FURTHER AGREES TO PROVIDE THE DEFENSE FOR, AND INDEMNIFY AND HOLD HARMLESS OWNERS FROM ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, AND LIABILITY, ARISING IN CONNECTION WITH THIS CONTRACT.

10.10 Texas Public Information Act

A. The Contractor recognizes that this Project is publicly owned, and the Owner is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights.

B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of NBU (the Owner).

C. The Contractor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Construction Manager on request of the Owner; and (3) on completion of the Agreement, either:

- i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
- ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

E. The waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Failure by the OWNER in any instance to insist upon observance or performance by CONTRACTOR shall not be deemed a waiver by CONTRACTOR of any such observance or performance. No waiver will be binding upon OWNER unless in writing and then will be for the particular instance only. Payment of any sum by OWNER to CONTRACTOR with knowledge of any breach or default will not be deemed a waiver of such breach or default or any other breach or default.

F. The CONTRACTOR acknowledges that the OWNER (through its employee handbook) considers the following to be misconduct that is grounds for termination of an employee of the OWNER: Any fraud, forgery, misappropriation of funds, receiving payment for services not performed or for hours not worked, mishandling or untruthful reporting of money transactions, destruction of assets, embezzlement, accepting materials of value from vendors, or consultants, and/or collecting reimbursement of expenses made for the benefit of the OWNER. The CONTRACTOR agrees that it will not, directly or indirectly, cause an employee of the OWNER to engage in such misconduct.

G. The CONTRACTOR agrees to comply with Appendix A (attached) of the City of New Braunfels's Title VI Nondiscrimination Plan Assurances.

ARTICLE 11 - INSURANCE

11.01 Evidence of Contractor's Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement. Evidence of insurance is attached as Exhibit C to this Agreement.

[ATTACHMENT A – Insurance Rider]
[ATTACHMENT B – Evidence of Insurance]

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

[OWNER AND CONTRACTOR SIGNATURE PAGE WILL BE INSERTED HERE]

APPENDIX 1

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

- (1) **Compliance with Regulations:** The contractor 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 Sub-Recipient or the Federal Highway Administration 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 Sub-Recipient, or the Federal Highway Administration 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 Sub-Recipient shall impose such contract sanctions as it or the Federal Highway Administration 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 Sub-Recipient or the Federal Highway Administration 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 Sub-Recipient to enter into such litigation to protect the interests of the Sub-Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX 2

INCORPORATES CONTRACTOR'S CERTIFICATIONS AND EXHIBITS AS ACKNOWLEDGED IN
THE PROJECT MANUAL AND ACKNOWLEDGED BY THE CONTRACTOR'S RESPONSE

PROJECT MANUAL – EXHIBIT 2 PROVIDES FOR THE FOLLOWING:

- Non-Collusion Statement (2 CFR 200.333)
- Differing Site Conditions (23 CFR 635.109)

The 23 Federal Code of Regulations (CFR 635.109) contains policies, requirements, and procedures for standardized "changed conditions" clauses for Federal aid highway projects. In summary, unless prohibited by State law, part 635 requires that a "differing site condition" clause shall be made part of and incorporated into each highway project approved under Title 23.

PROJECT MANUAL – EXHIBIT 12 PROVIDES FOR THE STATEMENT ON CONVICT-PRODUCED
MATERIALS AND CONVICT LABOR

PROJECT MANUAL – EXHIBIT 5 PREVAILING WAGE RATES

CITY OF NEW BRAUNFELS GENERAL CONDITIONS FOR CONSTRUCTION, ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

Authorized Changes in the Work

Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

Unauthorized Changes in the Work

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.05, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

Execution of Change Orders

Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09;

changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

Contractor Change Requests

Whenever it determines the Work depicted in or required by the Contract Documents should be modified, altered or changed to address unforeseen conflicts, changed conditions, or if, in the Contractor's opinion and evaluation, the change would benefit and improve the Project or reduce costs to the Owner, the Contractor may submit a Change Order request to the Engineer in any format the Contractor deems appropriate. The Engineer will consider such change and issue a recommendation to the Owner. The Contractor shall not delay or prevent continuation of other Work during the pendency of a Change Order request submitted by Contractor. Contractor shall not be entitled to any adjustment of the Contract Times or Contract Price due the submission of a Change Order request.

Claims

Claims Process: The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Paragraph:

Appeals by Contractor of Engineer's decisions regarding Change Proposals;

Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

The parties agree the Owner is not obliged to submit a Claim as provided in this Article 10.05 to assert its rights under the Contract Documents.

Submittal of Claim: The Contractor shall deliver its Claim directly to the Owner promptly, but in no event later than thirty (30) days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within thirty (30) days of the decision under appeal. Contractor shall also furnish a copy to the Engineer, for its information only. The Contractor is responsible to substantiate the Claim.

Review and Resolution: Owner shall review it thoroughly, giving full consideration to its merits. The parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

Mediation:

At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

If Owner and Contractor agree to mediation, then after sixty (60) days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process in writing, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined in writing by the mediator.

Owner and Contractor shall each pay one-half of the mediator's fees and costs.

Denial of Claim: If efforts to resolve a Claim are not successful, Owner may deny the Contractor's claim by giving written notice of denial to Contractor. If, after receipt of the written notice of denial, Contractor does not (1) take action on the Claim within ninety (90) days or (2) specifically reserves rights to pursue the Claim,

subject to controlling Laws and Regulations, then Contractor shall be deemed to have expressly waived such Claim.

Final and Binding Results: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; then the agreement shall be memorialized in a writing signed by both parties and results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

SECTION D

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

Project: Common Street Pedestrian Improvements
Highway:
City: City of New Braunfels
County: Comal
CSJ No: CSJ 0915-17-076

The following goal for disadvantaged business enterprises is established:

DBE
6.0%

Certification of DBE Goal Attainment

By signing the Bid, the Bidder certifies that the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal.

Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of requirements of the proposal. As a result, the bid guarantee of the Bidder will be property of OWNER and the Bidder will be excluded for rebidding on the project when it is re-advertised.

CONTRACTOR

By: _____

Name: _____

Title: _____

Email: _____

Phone: _____

Note: CERTIFICATION OF DBE GOAL ATTAINMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

Summary of Proposed Participation Goals - %

Use this section to calculate participation.
Include total dollar amount and percentage for each Subcontract.

DBE Goal for this Project: Common Street Pedestrian Improvements - CSJ 0915-17-076

Goal - 6%

Instructions:

- Fill in all the blanks (use "none" or "N/A" where appropriate).
- DBE Compliance Plan Summary shall be included as Tab 6 of Submittal.
- Fill in names of Subcontracting Firms and indicate certification type for those firms certified as DBE.
- Provide Amount of subcontract and Percent of DBE goal to the overall contract amount.
- Provide a Total Amount of all contracts and total percent of DBE.
- The "Total Bid" amount must be used in the DBE Compliance Plan Summary to determine subcontractor participation levels for the established DBE procurement goals.

List of Primary Subcontractors	Description of Work:	Certification Type:	Subcontract Amount	% Meeting DBE
•				
•				
•				
•				
Sub-total Contract Amount:				\$
Sub-total DBE %				%

Company Name

Name and Title of Authorized Representative:

Signature

Date

Note: SUMMARY OF PROPOSED PARTICIPATION GOALS MUST BE EXECUTED AND SUBMITTED WITH RESPONSE



**Disadvantaged Business Enterprise (DBE) Program
Commitment Agreement Form**

Form SMS.4901
(Rev. 06/08)
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the
Texas Department of Transportation for the subject project.

Project #:		County:		Contract-CSJ:	
Items of work to be performed (attach a list of work items if more room is required):					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
Total					
<div style="float:right; text-align:right;"> <input type="button" value="Add Row"/> <input type="button" value="Del Row"/> </div>					
<p>The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.</p>					
<p align="center">IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.</p>					
Prime Contractor:			Name/Title (please print):		
Address:			Signature:		
Phone:		Fax:	Date:		
E-mail:					
DBE:			Name/Title (please print):		
Vendor No.:			Signature:		
Address:		Fax:	Date:		
Phone:		Fax:			
E-mail:					
Subcontractor (if the DBE will be a second tier sub):			Name/Title (please print):		
Address:			Signature:		
Phone:		Fax:	Date:		
E-mail:					

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

Contact/Help

	Disadvantaged Business Enterprise (DBE) Program Material Supplier Commitment Agreement Form	Form SMS-4901 M/S (Rev. 08/20) Page 1 of 3
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This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project. Certified DBEs must be listed in the Texas Unified Certification Program (TUCP) Directory at time of submittal.

This form must be submitted by the entity who has been awarded a contract with the Texas Department of Transportation.

Project ID:

County:

Contract-CSJ:

Provide a description of work, agreed upon rate, and estimated quantities of materials or supplies.

Type of Suppliers: M = Manufacturer RD = Regular Dealer RDB = Regular Dealer Bulk-Item B = Broker

Type of Supplier (M, RD, RDB, or B)	Materials or Supplies Being Provided	Estimated Quantity of Materials	Price per Unit	Total		
<input type="checkbox"/> M <input type="checkbox"/> RD <input type="checkbox"/> RDB <input type="checkbox"/> B					+	-
<input type="checkbox"/> M <input type="checkbox"/> RD <input type="checkbox"/> RDB <input type="checkbox"/> B					+	-
<input type="checkbox"/> M <input type="checkbox"/> RD <input type="checkbox"/> RDB <input type="checkbox"/> B					+	-
<input type="checkbox"/> M <input type="checkbox"/> RD <input type="checkbox"/> RDB <input type="checkbox"/> B					+	-
<input type="checkbox"/> M <input type="checkbox"/> RD <input type="checkbox"/> RDB <input type="checkbox"/> B					+	-
Calculate/Recalculate Totals	Total Commitment Amount :					

Manufacturer Goal Credit = 100%

Total DBE goal credit at 100%.

1. Is the material to be supplied, modified, blended, quarried or fabricated by the DBE? ☐ Yes ☐ No

If yes, please explain in detail:

Regular Dealer Goal Credit = 60%

Total DBE goal credit at 60%.

1. Where is the DBE material supplier getting the materials? Please provide the name and address of the source of the materials.

2. Does the regular dealer inventory the materials or supplies? ☐ Yes ☐ No

(Note: The materials or supplies must be of the general character described by the specifications.)

If so, please provide the address of the storage facility, yard, or warehouse:

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Page 2 of 3

Total Commitment Amount: _____ **Total DBE Goal Credit:** _____

3. Are the materials or supplies typically sold in the regular dealer's normal business operations? ☐ Yes ☐ No

If so, provide an inventory list of these items only:

4. Who will deliver the materials to the project site? Provide a brief explanation of the arrangement.

Regular Dealer Bulk-Item Goal Credit = 60%

Total DBE goal credit at 60%: _____

1. Provide the name and address of the source or origin of the materials or supplies.

2. Does the DBE have an established account with the supplier or manufacturer of the materials? ☐ Yes ☐ No

3. For bulk material, the DBE must both own and operate the distribution equipment. Will the DBE be delivering the material for this project utilizing its own distribution equipment? ☐ Yes ☐ No

4. Is the DBE supplementing its distribution equipment through a long-term lease? ☐ Yes ☐ No

If so, provide a copy of the lease. Long-term is considered 12 months or more.

5. Does the DBE operate the leased distribution equipment with its own workforce? ☐ Yes ☐ No ☐ N/A

For goal credit, the supplementing of the DBE regular dealer's own distribution equipment is permitted. However, the DBE must operate the leased distribution equipment with its own workforce. This type of leasing arrangement is similar to leasing from a commercial source.

Packagers, Brokers (Middleman), Manufacturers' Representatives, Transaction Expeditors Goal Credit = Fees, or Commissions, or Transport Delivery Charges

Total DBE goal credit at _____ **%**

1. Does the DBE take ownership, title, or possession of the materials or supplies? ☐ Yes ☐ No

2. Will the DBE only be responsible for placing the orders or arranging for the delivery of the materials or supplies? ☐ Yes ☐ No

The contractor shall inform the District of the date the DBE will begin supplying materials or supplies to the project and when the DBE's responsibilities under this commitment end.

Calculate/Recalculate Totals

Form SMS-4901 M/S (Rev. 08/20)
Page 3 of 3

Total Commitment Amount: _____

Total DBE Goal Credit: _____

**IMPORTANT! A signature is required for each individual representing the firms listed on this form.
The total commitment amount must always be on the same page as the signatures.**

By signing this commitment, you agree to comply with all parts of 49 CFR Part 26. A subcontract agreement or Purchase Order must be executed with the DBE.

Prime Contractor

Entity Name: _____
Representative Name: _____ Address: _____
Title: _____ City: _____ State: _____ Zip: _____
Phone: _____
Signature _____ Date _____ E-mail: _____

First Tiered Subcontractor or Supplier

DBE Certified? ☐ Yes ☐ No

Firm Name: _____
Representative Name: _____ Address: _____
Title: _____ City: _____ State: _____ Zip: _____
Phone: _____
Signature _____ Date _____ E-mail: _____

Second Tiered Subcontractor or Supplier

DBE Certified? ☐ Yes ☐ No

Firm Name: _____
Representative Name: _____ Address: _____
Title: _____ City: _____ State: _____ Zip: _____
Phone: _____
Signature _____ Date _____ E-mail: _____

Other Tiered Subcontractor

DBE Certified? ☐ Yes ☐ No

Firm Name: _____
Representative Name: _____ Address: _____
Title: _____ City: _____ State: _____ Zip: _____
Phone: _____
Signature _____ Date _____ E-mail: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §552.021 and 552.023 of the Texas Government code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

[Contact/Help](#)

	Disadvantaged Business Enterprise (DBE) Program Commercially Useful Function (CUF)	Form 2182 (Rev. 01/19) Page 1 of 7
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Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... 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..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

TxDOT field staff will perform CUF reviews on DBEs. A minimum of one CUF review must be performed for each DBE on each project with or without a DBE goal. With the assistance of the DBE Coordinator, a CUF review should be completed for each DBE by the field/office staff within 60 days of initiation. The CUF review should be submitted with all supporting documentation (invoices, payroll, pictures, equipment, DWR and list of employees). The Area Office will submit the completed CUF form to the DBE Coordinator, who must review and finalize within 30 days. A CUF review must be conducted to assess performance and compliance should be monitored throughout the course of the project. The following questions on this form should be answered by the DBE Owner or DBE Superintendent.

Sections labeled "Part I" should be completed by field staff. Sections with "Part II" should be completed by office staff.

Project ID:		Contract-CSJ:	
County:		District:	
DBE Company Name:		DBE Representative Name:	
DBE Company Owner:		DBE Representative Title:	
Start Date of this DBE's Work:		End Date of this DBE's Work (Expected):	

DBE firm is performing as: ☐ Prime Contractor ☐ Subcontractor ☐ Tier Subcontractor ☐ Hauler

Provide a brief description of the DBE's scope of work. *(Obtain copy of Subcontract Agreement and/or Purchase Order if needed.)*

Form 2182 (Rev. 01/19)
Page 2 of 7

For any question marked "No," please explain in the "Comments" section at the end of the form.

Management	Yes	No	N/A
-------------------	------------	-----------	------------

Part I (to be completed by field staff):

Is there a supervisor on site? ☐ ☐ ☐

Does the supervisor effectively manage the job without interference from any other non-DBE contractor? ☐ ☐ ☐

Has the DBE owner been present on the jobsite? ☐ ☐ ☐

Who is scheduling work activities, material deliveries and other requirements for the DBE's work?
(Include name and titles below.)

Name	Title

Did the DBE subcontract any items or portions of the work to any other firm? ☐ ☐ ☐

If yes, what percentage was subcontracted?

Name of firm doing subcontracted work:

Is the subcontractor a DBE? ☐ ☐ ☐

Part II (to be completed by office staff):

Is the DBE maintaining its own payroll? ☐ ☐ ☐

Equipment	Yes	No	N/A
------------------	------------	-----------	------------

Part I (to be completed by field staff):

Does the equipment have the DBE's markings or emblems? ☐ ☐ ☐

If another firm's markings are present, identify the name of the firm:

Is the equipment and/or operator under the direct supervision of the DBE? ☐ ☐ ☐

Is the operator of the leased equipment the DBE's employee? ☐ ☐ ☐

(Use of the prime's equipment in an emergency is allowed, but the cost associated with the use of the equipment cannot be credited towards the goal.)

Part II (to be completed by office staff):

Is the equipment owned or leased? Owned ☐ Leased ☐

(Attach equipment list, ownership documents, and rental and lease agreements for equipment being used on the project.)

If leased, who is it leased from?

Form 2182 (Rev. 01/19)
Page 3 of 7

For any question marked "No," please explain in the "Comments" section at the end of the form.

Materials	Yes	No	N/A
-----------	-----	----	-----

Part I (to be completed by field staff):

Is the DBE contracted to furnish and install a contract item?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who makes the arrangements for the delivery of materials?			
Who schedules the delivery of materials?			

Part II (to be completed by office staff):

Are joint checks being used? (Obtain and attach TxDOT Joint Check Approval Form [2178] and verify approval. Attach copies of cancelled checks.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who are the parties identified as payable to?			
Who are the material invoices made out to? (Obtain and attach copies of invoices, Material on Hand Documents, cancelled checks.)			
In whose name are the materials shipped? (Obtain and attach copies of shipping documents, Bills of Ladings, etc.)			

Workforce	Yes	No	N/A
-----------	-----	----	-----

Part I (to be completed by field staff):

Does the DBE crew know which company they work for?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Attach a list with the names and titles of the DBE's crew present during the review.)			

Part II (to be completed by office staff):

Have copies of certified payrolls been obtained for verification? (Attach copies of certified payrolls.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Performance	Yes	No	N/A
-------------	-----	----	-----

Part I (to be completed by field staff):

Does the DBE appear to have control over methods of work on its contract items?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has any other contractor performed any amount of work specified in the DBE subcontract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, did the contractor have TxDOT's prior written approval before self-performing the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE performing at least 30% of the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Form 2182 (Rev. 01/19)
Page 4 of 7

Haulers

Yes No N/A

Part I (to be completed by field staff):

Do haul tickets indicate work is performed by DBE? (Attach copies of Haul Tickets.)

☐ ☐ ☐

Do the trucks on the work site belong to the DBE? (Obtain and attach verification of truck ownership in the name of the DBE.)

☐ ☐ ☐

Part II (to be completed by office staff):

If leased, are the lease agreement terms in compliance with DBE requirements? (Obtain and attach copies of lease agreements.)

☐ ☐ ☐

Commensurate

Yes No N/A

Part II (to be completed by office staff):

Is payment received by the DBE commensurate with the work being performed?

☐ ☐ ☐

(Review the payment information on the monthly progress report form or payment entry in DMS.)

Comments

Commercially Useful Function Determination

Yes No

Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract?(If "No" proceed to "Non-Commercially Useful Function Determination.")

☐ ☐

Date of Review:

Signatures and dates below must be included prior to submission.

Reviewer Signature: Date:

Printed Name: Title:

Reviewer Signature: Date:

Printed Name: Title:

DDC Signature: Date:

Printed Name: Title: DBE Coordinator

Form 2182 (Rev. 01/19)
Page 5 of 7

Non-Commercially Useful Function Determination

(The DBE has 10 days from the date it receives the letter to rebut these findings.)

If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

Yes No

Did the action taken correct the deficiency?

☐

☐

Date of Review:**Date of Correction:**

Signatures and dates below must be included prior to submission.

Reviewer Signature:**Date:**

Printed Name:**Title:**

Reviewer Signature:**Date:**

Printed Name:**Title:**

DDC Signature:**Date:**

Printed Name:**Title:** DBE Coordinator

Contact/Help

Form 2182 (Rev. 01/19)
Page 6 of 7

CUF Determinants

Management

- Scheduling work operations
- Preparing and submitting certified payrolls
- Full-time supervisor or superintendent

Red Flags

- The DBE owner or superintendent provides little or no supervision of the work
- The DBE's superintendent is not a regular employee of the firm
- The DBE owner is not aware of the status of the work

Records/Documents

- Subcontract Agreement or Purchase Order
- Daily inspection reports
- Certified payrolls

Equipment (Take photos where possible)

- The DBE owns, rents or leases equipment
- The DBE may lease specialized equipment with an operator
- The DBE provides the operator and is responsible for all labor and compliance for non-specialized equipment
- The DBE's sign or logo is on the equipment
- The DBE is utilizing its own equipment

Red Flags

- The DBE and prime share equipment
- Equipment signs and markings cover another contractor's identity
- DBE's name is not on the lease agreement

Records/Documents

- Invoices
- Haul tickets or Bills of Lading
- Lease agreement
- Ownership documents, e.g. title, registration, vehicle identification number (VIN)
- Cancelled checks

Materials

- The DBE is ordering materials, and invoices indicate the DBE is the customer
- The contact person is employed by the DBE
- The DBE is paying for the materials
- The use of joint checks have been approved

Red Flags

- Materials for the DBE are ordered, or paid for, by the prime contractor
- Invoices do not indicate the DBE is the customer
- The prime's employee and phone number is listed as the contact
- Materials come from the prime's stockpile or an affiliate of the prime

Records/Documents

- Invoices
- Material on Hand documents
- Delivery Tickets, Haul Tickets, Bills of Lading
- Joint Checks
- Cancelled Checks
- Subcontract Agreement

Form 2182 (Rev. 01/19)
Page 7 of 7

Performance/Workforce

- DBE must be responsible for performing its own work on the project
- At least 30% of the work must be performed by the DBE with its own workforce
- The DBE keeps a regular workforce and had its own employees

Red Flags

- A portion of the DBE's work being done by the Prime Contractor or jointly with another contractor
- Employees working for both the prime and the DBE
- Supervision of the DBE employees by another contractor
- The work is outside of the DBE's known experience or capability
- The DBE's work is self-performed by the prime or another contractor

Records/Documents

- Subcontract Agreement or Purchase Order
- DBE monthly progress reports
- Certified payrolls

DBE Trucking Firms

- The DBE is required to own and operate at least one fully licensed, insured and operational truck on the contract
- The DBE is allowed to lease trucks from DBEs and non-DBEs
- The DBE keeps a regular workforce and has its own employees
- The DBE is utilizing its own equipment
- Operation of the equipment must be subject to the full control of the DBE

Red Flags

- The DBE does not own any trucks used on the project
- DBE trucks are never at the job site (owned or leased)
- Large trucking commitment - compared to DBE capacity
- DBE does not own the right type of truck for the work
- No lease agreement present or trucks not owned by the DBE firm

Records/Documents

- Subcontract Agreement or Purchase Order
- Equipment ownership, rental, or lease documents
- Payroll records
- List of trucks and truck unit numbers and Vehicle Identification Numbers (VIN)



DBE Trucking Credit Worksheet

For Month of (Month/Year): _____

Form 2371
(04/10)
Page 1 of 1

Project: _____ County: _____ Prime Contractor: _____

Contract CSJ: _____ District: _____ ☒ DBE Hauling Firm: _____

License Plate #	Unit #	Name of DBE Hauling Firm or DBE Truck Owner/Operator	Amt Paid to DBEs for Work Performed this Month	Total Amt Paid to DBEs to Date	Amt Paid to Non-DBE Haulers	For TxDOT use Only

Add Row

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE trucking firms listed above.

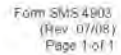
Signature: _____
DBE Company Official

Date: _____

The DBE firm must send the report to the prime contractor in a timely manner. The prime contractor must then submit this form with the DBE Monthly Progress Report (MPR).

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Government Code, you also are entitled to receive and review this information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

[Contact/Help](#)

[Contact/Help](#)

	Prompt Payment Certification	Form 2177 (Rev. 07/19) Page 1 of 1
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In accordance with the requirements of Article 9.9, submit this certification to the Engineer prior to the end of the month as follows:

- **each month payment received** (example: Work performed in January. Contractor paid in February. Contractor must submit certification no later than the end of March) and
- **the month following the month when final acceptance occurred** (example: Final acceptance occurs in January. Contractor must submit the final certification no later than the end of February).
Note that the Contractor may make final submission prior to acceptance, if all subcontractor work is complete and all supplier materials have been furnished for the project, and the subcontractors' and suppliers' final payments have been made in full.

Failure to submit this form or provide prompt payment in accordance with the contract may result in the Engineer withholding payment or suspending the work. This certification is applicable to materials the Contractor purchases to remain as part of the final project, to first-tier subcontractors on the project and associated project specific locations (subcontractors and suppliers are to comply with the prompt payment requirements).

Certification

"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."

Project Number: <input style="width: 90%;" type="text"/>	CCSJ: <input style="width: 90%;" type="text"/>
Estimate Period: <input style="width: 40%;" type="text"/> Month <input style="width: 10%;" type="text"/> Year	or <input style="width: 40%;" type="text"/> Final Subcontractor and Supplier Payment Date
Signature	Title
Date	
Printed Name: <input style="width: 90%;" type="text"/>	

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment

*Only reasons based on dispute of subcontractor or supplier noncompliance may be accepted.

This is a government document certifying satisfactory completion of the requirements of Article 9.9 of the contract regarding the payment of subcontractors. A Contractor may be sanctioned under department rules for filing a false certification.

Contact/Help

SMS.4902

Texas Department of Transportation
DBE Prime Contractor Payments
to Non-DBE Subcontractors

Project:

Contract CSJ:

County:

District:

Letting Date:

For the Month of (Mo/Yr): _____

Contractor:

Contract Amount: \$

Name of Non-DBE Subcontractor	\$ Amount Paid This Period	Total \$ Amount Paid to Date

Send this report to the Area Engineer. Report is due within 15 days following the end of each calendar month.

Signature: _____ Date: _____
Company Official

The DBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all DBE activity on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project:	Contract CSJ:
County:	Control Project:
Letting Date:	DBE Goal: %
Contractor:	Contract Amount:

[illegible]

* Race-Conscious or Race-Neutral.

Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second-tier subcontractors and haulers from this column.

† DBE subcontractors paid to non-DBE subcontractors/haulers.

Was there a project under-run caused by a TxDOT change order that impacted DBE Goal attainment? ☒ Yes ☐ No Change Order Number

This is to certify that _____ % of the work was completed by Disadvantaged Business Enterprises as stated above.

By _____ Per: _____
Name of General Contractor Contractor's Signature

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

Notary Public	County
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My commission expires:

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

[Contact/Help](#)

Note: DBE FINAL REPORT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

SECTION E

EXHIBITS

TXDOT LOCAL GOVERNMENT PROJECT PROCEDURES REQUIREMENTS:

EXHIBIT 1 – UNIT PRICE BID FORM

EXHIBIT 2 – CONTRACTORS CERTIFICATIONS

EXHIBIT 3 - DISCLOSURE OF LOBBYING ACTIVITIES

EXHIBIT 4 – CONTRACTORS QUALIFICATIONS

EXHIBIT 5 – PREVAILING WAGE RATES AND PAYROLL REPORTING

EXHIBIT 6 – CERTIFICATE OF NON-SUSPENSION OR DEBARMENT

EXHIBIT 7 – CHILD SUPPORT STATEMENT AND FORM

EXHIBIT 8 – CONFLICT OF INTEREST QUESTIONNAIRE – CIQ

EXHIBIT 9 – SALES AND USE TAX EXEMPTION

EXHIBIT 10 – BOND FORMS

EXHIBIT 11 – FORM 1295

EXHIBIT 12 – STATEMENT ON CONVICT PRODUCED MATERIAL & CONVICT LABOR

EXHIBIT 13 – TxDOT FORM 1560 CERTIFICATE OF INSURANCE

EXHIBIT 14 – TxDOT FORM 1818 MATERIAL STATEMENT

**EXHIBIT 15 - CONTRACTORS ACKNOWLEDGMENT OF STORMWATER MANAGEMENT
PROGRAM**

EXHIBIT 1

BID FORM

Official Bid Response shall be in PDF Format

Refer to Exhibit 1 is provided in PDF and Excel Format

The undersigned, in compliance with the Invitation for Bids for construction of the following Project: **Common Street Pedestrian Improvements CSJ 0915-17-076** for the City of New Braunfels, Texas, having examined the Project Manual, Drawings and Addenda, the site of the proposed Work and being familiar with all of the conditions surrounding construction of the proposed Project, having conducted all inquiries, tests and investigations deemed necessary and proper; hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment, and incidentals, and to perform all Work required for construction of the Project in accordance with the Project Manual, Drawings and Addenda within the time indicated.

Note: The Bidder will enter the line-item subtotal in the "Total Bid Item Cost" column below, which is the product of the estimated "Quantity" multiplied by the "Unit Cost". Any mathematical errors will be corrected for the purpose of determining the correct Amount to be entered in the Bid Form. The Amounts, including any corrected Amounts, will then be totaled to determine the actual amount of the Bid.

Respondent shall submit Bid Form in PDF as the official bid response form and provide an Excel Format for tabulation purposes only.

**Common Street Sidewalk Improvements
CSJ 0915-17-076**

The City only will accept bid pricing to the hundredths. Any pricing extended out to three decimal points will be truncated to two decimal points in the City's favor.

Item No.	Description	Unit	Est. Quantity	Unit Price	Extended Price
100-6001	PREPARING ROW	AC	2.85		
100-6006	PREP ROW (TREE)(LESS THAN 24" DIA)	EA	5		
100-6007	PREP ROW (TREE)(GREATER THAN 24" DIA)	EA	3		
104-6009	REMOVING CONC (RIPRAP)	SY	16		
104-6017	REMOVING CONC (DRIVEWAYS)	SY	1,668		
104-6029	REMOVING CONC (CURB OR CURB & GUTTER)	LF	1,092		
104-6036	REMOVING CONC (SIDEWALK OR RAMP)	SY	1,567		
105-6008	REMOVING STAB BASE AND ASPH PAV (6")	SY	561		
105-6128	REMOVING UNTREATED BASE (8")	SY	37		
134-6011	BACKFILLING PAVEMENT EDGES	CY	35		
160-6003	FURNISHING AND PLACING TOPSOIL (4")	SY	5,595		
162-6002	BLOCK SODDING	SY	5,595		
168-6001	VEGETATIVE WATERING	MG	88		
351-6008	FLEXIBLE PAVEMENT STRUCTURE REPAIR(12")	SY	50		
416-6031	DRILL SHAFT (TRF SIG POLE) (30 IN)	LF	44		
420-6074	CL C CONC (MISC)	CY	3		
432-6001	RIPRAP (CONC)(4 IN)	CY	17		
432-6003	RIPRAP (CONC)(6 IN)	CY	3		
450-6048	RAIL (HANDRAIL)(TY B)	LF	26		
471-6003	GRATE & FRAME	EA	6		
479-6003	ADJUSTING MANHOLES & INLETS	EA	25		
500-6001	MOBILIZATION	LS	1		
502-6001	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	6		
506-6035	SANDBAGS FOR EROSION CONTROL	EA	115		
506-6038	TEMP SEDMT CONT FENCE (INSTALL)	LF	9,638		
506-6039	TEMP SEDMT CONT FENCE (REMOVE)	LF	9,638		
506-6042	BIODEG EROSN CONT LOGS (INSTL) (18")	LF	204		
506-6043	BIODEG EROSN CONT LOGS (REMOVE)	LF	204		
529-6001	CONC CURB (TY I)	LF	131		
529-6008	CONC CURB & GUTTER (TY II)	LF	462		
529-6015	CONC CURB (TY C1)	LF	1,267		
529-6027	CONC CURB (TY C2)	LF	200		
530-6004	DRIVEWAYS (CONC)	SY	1,833		
531-6001	CONC SIDEWALKS (4")	SY	6,065		
531-6004	CURB RAMPS (TY 1)*	EA	14		
531-6009	CURB RAMPS (TY 6)*	EA	12		
531-6010	CURB RAMPS (TY 7)*	EA	26		
560-6025	RELOCATE EXISTING MAILBOX	EA	16		
618-6046	CONDT (PVC) (SCH 80) (2")	LF	361		
618-6047	CONDT (PVC) (SCH 80) (2") (BORE)	LF	128		

Item No.	Description	Unit	Est. Quantity	Unit Price	Extended Price
618-6053	CONDT (PVC) (SCH 80) (3")	LF	130		
618-6054	CONDT (PVC) (SCH 80) (3") (BORE)	LF	128		
620-6007	ELEC CONDR (NO.8) BARE	LF	306		
620-6011	ELEC CONDR (NO.4) BARE	LF	188		
620-6012	ELEC CONDR (NO.4) INSULATED	LF	376		
624-6008	GROUND BOX TY C (162911)W/APRON	EA	5		
624-6012	GROUND BOX TY E (122317)W/APRON	EA	2		
628-6164	ELC SRV TY D 120/240 070(NS)AL(E)PS(U)	EA	2		
636-6001	ALUMINUM SIGNS (TY A)	SF	20		
644-6001	IN SMRD SN SUP&AM TY10BWG(1)SA(P)	EA	17		
644-6068	RELOCATE SMRD SN SUP&AM TY 10BWG	EA	44		
666-6042	REFL PAV MRK TY I (W)12"(SLD)(100MIL)	LF	422		
666-6048	REFL PAV MRK TY I (W)24"(SLD)(100MIL)	LF	2,620		
666-6228	PAVEMENT SEALER 12"	LF	422		
666-6230	PAVEMENT SEALER 24"	LF	2,620		
677-6001	ELIM EXT PAV MRK & MRKS (4")	LF	388		
677-6002	ELIM EXT PAV MRK & MRKS (6")	LF	20		
677-6007	ELIM EXT PAV MRK & MRKS (24")	LF	758		
678-6006	PAV SURF PREP FOR MRK (12")	LF	422		
678-6008	PAV SURF PREP FOR MRK (24")	LF	2,620		
680-6002	INSTALL HWY TRF SIG (ISOLATED)	EA	2		
682-6003	VEH SIG SEC (12")LED(YEL)	EA	8		
682-6005	VEH SIG SEC (12")LED(RED)	EA	16		
682-6018	PED SIG SEC (LED)(COUNTDOWN)	EA	4		
682-6051	BACKPLATE W/REFL BRDR(3 SEC)ALUM	EA	8		
684-6007	TRF SIG CBL (TY A)(12 AWG)(2 CONDR)	LF	434		
684-6010	TRF SIG CBL (TY A)(12 AWG)(5 CONDR)	LF	278		
684-6012	TRF SIG CBL (TY A)(12 AWG)(7 CONDR)	LF	278		
684-6079	TRF SIG CBL (TY C)(12 AWG)(2 CONDR)	LF	278		
686-6027	INS TRF SIG PL AM(S)1 ARM(24')LUM	EA	3		
686-6035	INS TRF SIG PL AM(S)1 ARM(32')LUM	EA	1		
688-6001	PED DETECT PUSH BUTTON (APS)	EA	4		
5084-6001	FIXED BOLLARD	EA	3		
CITY TOTAL					\$ -

Company Name: _____

Proposers Name: _____

Signed By: _____

(Authorized Representative)

ADDENDA: The undersigned hereby acknowledges receipt of the following addenda to the Drawings and Specifications; all of the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

PROPOSAL AMOUNT: The "TOTAL PROPOSAL" amount must be used in the DBE Compliance Plan Summary page to determine subcontractor participation levels for the established DBE procurement goals.

The "BASE BID" amount becomes the bidder's "TOTAL BID" if allowances and/or alternates are not authorized by the Owner.

The project will be awarded to the qualified low-bidder based on the "TOTAL PROPOSAL" listed above.
Bidder.

In the event of a mathematical error, the correct product, determined by using the "Unit Price" and "Quantity", and the correct sum, determined by totaling the correct line-item Amounts, will prevail over the amount entered by the Bidder. The unit prices shown above will be the unit prices used to tabulate the Bid and used in the Contract, if awarded by the City.

Notes:

- 1) **MINIMUM WAGES:** Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Heavy and Highway Trades "AS APPLICABLE" and/or minimum Wage, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the minimum wage required.

BID GUARANTY: A Bid guaranty must be enclosed with this Bid in the amount of not less than five percent (5%) of the total Bid. Following the Bid opening, submitted Bids may not be withdrawn for a period of (60) Calendar Days. Award of Contract will occur within this period, unless mutually agreed between the parties. The Bid guaranty may become the property of the OWNER, or the OWNER may pursue any other action allowed by law, if:

- Bidder withdraws a submitted Bid within the period stated above;
- Bidder fails to submit required post Bid information within the bid guaranty period, or any mutually agreed extension of that period; or,
- Bidder fails to execute the Contract and furnish the prescribed documentation (bonds, insurance, etc.) needed to complete execution of the Contract within five (5) Working Days after notice of award, or any mutually agreed extension of that period.

TIME OF COMPLETION: The undersigned Bidder agrees to commence work on the date specified in the written "Notice to Proceed" to be issued by the OWNER and to **substantially** complete construction of the improvements, as required by the Project Manual, Drawings and Addenda for the Work within **120** working days. **The Bidder further agrees to reach Final Completion within 150 working days after Substantial Completion as required by the Project Manual, Drawings and Addenda for the work.** The Bidder further agrees that should the Bidder fail to **substantially complete the Work or to** complete the Work within the number of days indicated in the Bid or as subsequently adjusted, Bidder shall pay the liquidated damages for each consecutive day thereafter as provided in the Contract; unless the OWNER elects to pursue any other action allowed by law.

WAIVER OF ATTORNEY FEES: In submitting its bid, in consideration for the waiver of its right to attorney's fees by the OWNER, the Bidder knowingly and intentionally agrees to and shall waive the right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to any Contract awarded pursuant to this solicitation process.

LIQUIDATED DAMAGES: The Bidder understands and agrees that the timely completion of the described Work is of the essence. The Bidder and OWNER further agree that the OWNER's actual damages for delay caused by failure to timely complete the Project are difficult, if not impossible to measure. However, with respect to the additional administrative and consultant costs to be incurred by OWNER, the reasonable estimate of such damages has been calculated and agreed to by OWNER and Bidder. Therefore, the Bidder and the OWNER agree that for each and every **Working Day** the Work or any portion thereof, remains incomplete after the **Final Completion** date as established by the above paragraph, "Time of Completion", payment will be due to the Owner in the amount of **twelve hundred dollars (\$1200) per Working Day** as liquidated damages, not as a penalty, but for delay damages to the OWNER. Such amount shall be deducted by the OWNER from any Contract payment due. In the event of a default or breach by the CONTRACTOR and demand is made upon the surety to complete the project, in accordance with the Contract Documents, the surety shall be liable for liquidated damages pursuant to the Contract Documents in the same manner as the CONTRACTOR would have been.

OWNER reserves the right to reject any or all Bids and to waive any minor informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Bids).

Bid Document Execution and Acknowledgment On Next Page

BID DOCUMENT EXECUTION AND ACKNOWLEDGMENT:

The undersigned Bidder certifies that he/she has read and understands the Invitation for Bids, the Instructions to Bidders, Addenda, and all other requirements applicable to the bidding process provided in the Contract.

Secretary, *if Bidder is a Corporation

Bidder

(Seal)

Authorized Signature

Title

Date

Address

Telephone Number

Email Address for Person Signing Bid

Email Address for Bidder's Primary Contact Person

* Copy of Corporate Resolution and minutes with certificate of officer of Bidder as to authority of signatory to bind Bidder is to be signed and dated no earlier than one week before Bid date and attached to this document.

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

CONTRACTOR'S CERTIFICATIONS

Provide responses that are clear and comprehensive.

Company name: _____

Permanent main
office address: _____
Street City, ST ZIP

Tax ID No.: _____

1. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

2. Form of Ownership: ☐ Proprietorship ☐ Partnership ☐ Corporation ☐ Other (specify)

DEBARMENT/SUSPENSION INFORMATION:

Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?
☐ Yes ☐ No

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

SURETY INFORMATION

Has the Respondent ever had a bond or surety canceled or forfeited? ☐ Yes ☐ No

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. (Provide in this format.)

CERTIFICATIONS

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. ☐ Yes ☐ No

- a. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the contract execution;
- b. "fraudulent practice" means an intentional misrepresentation of facts made
 - 1. to influence the solicitation process or the execution of the Contract to the detriment of Owners,
 - 2. to establish Cost Estimate or Contract prices at artificial non-competitive levels, or
 - 3. to deprive Owners of the benefits of free and open competition;
- c. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owners, a purpose of which is to establish Cost Estimates at artificial, non-competitive levels; and
- d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

2. NON-COLLUSION CERTIFICATION:

- A. Do you certify that all of the following are true and correct concerning your company's cost estimate?

☐ Yes ☐ No

- 1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
- 2. That your cost estimate is genuine and is not a collusive or sham cost estimate;
- 3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost estimate, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost estimate or in any other cost estimate, or to secure through
- 4. any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
- 5. The prices quoted in your cost estimate are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf

3. ANTI-LOBBYING:

- A. Lobbying activities or representations by the Bidder are prohibited between the date that the Invitation for Bid (IFB) is issued and the date of contract execution.

- 1. During a no-contact period, a bidder shall make a representation only through the authorized contact person.

2. During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.
3. The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

Do you certify that you are fully informed of the Anti-lobbying information above and all parties of your company will be informed?

☐ Yes ☐ No

4. CERTIFICATE OF NONDISCRIMINATION OF EMPLOYMENT:

- A.** The Bidder certifies that Bidder 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 Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder 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.

☐ Yes ☐ No

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.

5. LITIGATION DISCLOSURE:

Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.

1. Has your company ever failed to complete, defaulted, or been terminated on a project?

☐ Yes ☐ No

If yes, attached the project name and location, owner and engineer names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?
- A) Non-compliance by your company with any obligations under any

current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or ☐ **Yes** ☐ **No**

B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or ☐ **Yes** ☐ **No**

C) Non-payment to Sub-Contractors and material suppliers? ☐ **Yes** ☐ **No**

D) Have you or any member of your Firm or Team paid liquidated damages in the last three (3) year? ☐ **Yes** ☐ **No**

If you answered yes to any of the above questions, provide in an attachment the project name and location, owner and engineer names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period? ☐ **Yes** ☐ **No**

4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years? ☐ **Yes** ☐ **No**

6. **BUY AMERICA:**

The bidding firm and the signer certify that they will comply with the latest provisions of Buy America as listed at:

1. Buy America Requirements (23 CFR 635.410) ☐ **Yes** ☐ **No**

Including use of steel or iron materials manufactured in the United States except when:

- The cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater;
- The Contract contains an alternate Item for a foreign source steel or iron product and the Contract is awarded based on the alternate Item; or
- The materials are temporarily installed.

Provide a notarized original of the FORM D-9-USA-1 with the proper attachments for verification of compliance. Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

2. Differing Site Conditions (23 CFR 635.109)

☐ Yes ☐ No

- a. The 23 Federal Code of Regulations (CFR 635.109) contains policies, requirements, and procedures for standardized "changed conditions" clauses for Federal aid highway projects. In summary, unless prohibited by State law, part 635 requires that a "differing site condition" clause shall be made part of and incorporated into each highway project approved under Title 23.

7. PROHIBITION ON CERTAIN TELECOMMUNICATIONS EQUIPMENT OR SERVICES

Contractor acknowledges:

☐ Yes ☐ No

The Federal Register Notice issued the Final Rule and states that the amendment to 2 CFR 200.216 is effective on August 13, 2020. The new 2 CFR 200.471 regulation provides clarity that the telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable for services and equipment from these specific providers. [OMB's Federal Register Notice](#) includes the new 2 CFR 200.216 and 2 CFR 200.471 regulations.

Per the Federal Law referenced above, use of services, systems, or services or systems that contain components produced by any of the following manufacturers is strictly prohibited for use on this project. Therefore, for any telecommunications, CCTV, or video surveillance equipment, services or systems cannot be manufactured by, or have components manufactured by:

- Huawei Technologies Company,
- ZTE Corporation (any subsidiary and affiliate of such entities),
- Hyatera Communications Corporation,
- Hangzhou Hikvision Digital Technology Company,
- Dahua Technology Company (any subsidiary and affiliate of such entities).

Violation of this requirement will require replacement of the equipment at the contractor's expense.

8. DISCLOSURE OF PROPRIETARY INFORMATION

Contractor acknowledges:

☐ Yes ☐ No

- 8.1. All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Proposer does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal.

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

- 8.2. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents and Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to

the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

8.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Proposals and Contract and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

9. CONTRACTOR'S ASSURANCE (Subcontracts-Federal Aid Projects)

By signing this proposal, the contractor is giving assurances that all subcontract agreements will incorporate the Standard Specification and Special Provisions to Section 9.9., Payment Provisions for Subcontractors, all subcontract agreements exceeding \$2,000 will incorporate the applicable Wage Determination Decision, and all subcontract agreements will incorporate the following:

Special Provision	SP 000-0033L - "Certification of Nondiscrimination in Employment"
Special Provision (Executive Order 11246)	SP 000-004L - "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity"
Special Provision (Executive Order 11246)	SP 000-005L - "Standard Federal Equal Employment Opportunity (Executive Construction Contract Specifications"
Special Provision	SP 000-394L - "Disadvantaged Business Enterprise in Federal Aid Contracts"
Form FHWA 1273	"Required Contract Provisions Federal-aid Construction Contracts (Form FHWA 1273 must also be physically attached to subcontracts and purchase orders of \$10,000 or more.)
Special Provision	SP 000-003L - Nondiscrimination (Include provisions of Sections 3.1 – 3.6 in all subcontracts and agreements for materials)
Special Provision	SP 000-241L - Cargo Preference Act Requirements in Federal-Aid

ACKNOWLEDGMENT ON NEXT PAGE

ACKNOWLEDGMENT

THE STATE OF
TEXAS
COUNTY
OF _____

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected.

Bidder's full name and entity status:

Company's Name

Signature, Authorized Representative of Bidder

Title

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bidder or offer exceeding \$100,000).

The Bidder certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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 grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. 135©(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

DATE: _____

BIDDER/FIRM: _____

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

CONTRACTOR QUALIFICATIONS

This project will have funding from the Federal Highway Administration.

The Contract is to be awarded on the basis of Lowest Responsible and Responsive Bidder. The following qualification will be applied to demonstrate qualifications to perform the work.

1. Each Bid must contain evidence of Bidder's qualifications to perform the work described in the Contract Documents.
 - 1.1. Bidders on this project must be prequalified through TxDOT. Include proof of TxDOT Certification with this Exhibit 4.
 - 1.2. Each Bid must contain evidence of Bidder's qualifications. Contractor shall demonstrate previous experience with projects of in traffic signals, retaining walls, sidewalk, curb ramp, driveway, paving, signing and pavement marking construction of similar size and nature.
 - 1.3. The Bidder is required to submit the following information to Owner for consideration:

Answer all questions. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets.

OWNERSHIP

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

- 1 Name of Bidder: _____ Date Organized: _____
Address: _____ Date Incorporated: _____
Federal ID Number: _____
- 2 Number of years in contracting business under present name: _____
- 3 List Names of Owners, Partners, or shareholders: _____

4 Contracts on hand:

<u>Contract</u>	<u>Amount</u>	<u>Anticipated Completion Date</u>

5 Type of work performed by your company: _____

6 Have you ever failed to complete any work awarded to you? ☐ Yes ☐ No

7 Have you ever defaulted on a contract? ☐ Yes ☐ No

8 Major equipment available for this contract: _____

9 Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months? ☐ Yes ☐ No

10 Is Respondent authorized and/or licensed to do business in Texas? ☐ Yes ☐ No
If yes, list authorizations/licenses.

EXPERIENCE & QUALIFICATIONS:

Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation.

1. Prospective bidders must not have been terminated by the City of New Braunfels on any prior projects nor have any litigation with the City for any construction project.
2. Bids shall be considered from responsible respondents with experience **in traffic signals, retaining walls, sidewalk, curb ramp, driveway, paving, signing and pavement marking construction**. The Respondent's experience, in combination with its subcontractor's experience, should include a minimum of three (3) projects within the last five (5) years demonstrating such experience.
 - 2.1. Contractor should include Project Summaries that demonstrate knowledge of sequencing, staging and construction challenges related to the scope of this Project. Project Summary should describe specific experience with constructing pedestrian improvements per current accessibility requirements.
 - 2.2. Each Project summary should include: Project name, project scope, location, duration (start and end dates), reference (owner name with a phone number and e-mail address, original and final contract amount, date of final completion and names of project manager, superintendent, estimator and project engineer.
 - 2.3. The Contractor shall list in the spaces provided below, **three (3) past projects of similar size and scope** that have been installed and are in operation **within the past five (5) years**.

No.	Location	Description (Size, Type, Length)	Project \$ Amount	Contact Person & Phone Number	Date of Installation
1.					
2.					
3.					

- 2.4. How many years has your current organization been doing business as a construction general contractor?

_____ years.

If less than three (3) years, please explain in an attachment your organization's construction general contractor history.

- 2.5 How many years has your company been engaged in business under its present name?

_____ years.

- 2.6. How many years have you been doing construction-contracting work under previous business name(s)?

Give former names of the company, with dates of operation under each name.

Former Name	Date/Duration

3. Your company certifies that the Superintendent/Manager you propose for this Project has sufficient knowledge, skills and experience in similar Project work: ☐ Yes ☐ No

Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this Contract. ☐ Yes ☐ No

Your company certifies that it is not in arrears in the payment of any obligations to the City, including, without limitation, property or sales taxes, fees or utility charges. ☐ Yes ☐ No

If no to any of the above attach an explanation:

4. Provide a complete list of sub-Contractors and Suppliers for the Work. Attach with this Exhibit 4

ACKNOWLEDGMENT ON NEXT PAGE

ACKNOWLEDGMENT

THE STATE
OF TEXAS
COUNTY
OF _____

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected.

Bidder's full name and entity status:

Company's Name

Signature, Authorized Representative of Bidder

Title

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

WAGE RATE DETERMINATION
COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX20240007- HEAVY AND HIGHWAY CONSTRUCTION

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
- <https://sam.gov/>

PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.
Exhibit 5 - Prevailing Wage Schedule

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

EMPLOYMENT REQUIREMENTS AND WAGE RATES

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

3/8/24, 2:35 PM

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"General Decision Number: TX20240007 01/05/2024

Superseded General Decision Number: TX20230007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennan and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<p>Executive Order 14026 generally applies to the contract.</p> <p>The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</p>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<p>Executive Order 13658 generally applies to the contract.</p> <p>The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</p>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<https://sam.gov/wage-determination/TX20240007/0>

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<http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/05/2024

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	**
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94	**
Structures.....	\$ 12.87	**
LABORER Asphalt Raker.....	\$ 12.12	**
Flagger.....	\$ 9.45	**
Laborer, Common.....	\$ 10.50	**
Laborer, Utility.....	\$ 12.27	**
Pipelayer.....	\$ 12.79	**
Work Zone Barricade Servicer.....	\$ 11.85	**
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR: Agricultural Tractor.....	\$ 12.69	**
Asphalt Distributor.....	\$ 15.55	**
Asphalt Paving Machine.....	\$ 14.36	**
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	**
Concrete Pavement Finishing Machine.....	\$ 15.48	**
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	**
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	**
Directional Drilling Locator.....	\$ 11.67	**
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	**
Excavator over 50,000 lbs...	\$ 17.71	
Foundation Drill, Truck Mounted.....	\$ 16.93	**
Front End Loader, 3 CY or Less.....	\$ 13.04	**
Front End Loader, Over 3 CY.	\$ 13.21	**
Loader/Backhoe.....	\$ 14.12	**
Mechanic.....	\$ 17.10	**
Milling Machine.....	\$ 14.18	**
Motor Grader, Fine Grade...	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	**
Pavement Marking Machine...	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	**

<https://sam.gov/wage-determination/TX20240007/0>

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Roller, Asphalt.....\$ 12.78 **
Roller, Other.....\$ 10.50 **
Scraper.....\$ 12.27 **
Spreader Box.....\$ 14.04 **
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **
Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

Traffic Signal Installation

Traffic Signal/Light Pole
Worker.....\$ 16.00 **

TRUCK DRIVER

Lowboy-Float.....\$ 15.66 **
Off Road Hauler.....\$ 11.88 **
Single Axle.....\$ 11.79 **
Single or Tandem Axle Dump
Truck.....\$ 11.68 **
Tandem Axle Tractor w/Semi
Trailer.....\$ 12.81 **

WELDER.....\$ 15.97 **

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

** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$17.20) or 13658
(\$12.90). Please see the Note at the top of the wage
determination for more information. Please also note that the
minimum wage requirements of Executive Order 14026 are not
currently being enforced as to any contract or subcontract to
which the states of Texas, Louisiana, or Mississippi, including
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is
like family to the employee) who is a victim of, domestic
violence, sexual assault, or stalking. Additional information
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses

<https://sam.gov/wage-determination/TX20240007/0>

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(29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

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for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

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END OF GENERAL DECISION"

49 CFR Part 29 - Appendix A

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

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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.

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

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

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or Business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

State of Texas Child Support Business Ownership Form

County: _____

Project Name: _____

TxDOT CSJ: _____

LG Project Number: _____

Business Entity Submitting Bid: _____

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the names and social security number of individuals owning 25% or more of the business entity submitting the bid.

1. In the spaces below please provide the names and social security number of individuals owning 25% or more of the business.

Name	Social Security Number
_____	_____
_____	_____
_____	_____
_____	_____

2. Please check the box below if no individual owns 25% or more of the business.

(☐) No individual own 25% or more of the business.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by Enter Local Government Name. With few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

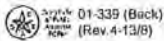
Signature

Date

Printed Name

IF THIS PROJECT IS A JOINT VENTURE,
ALL PARTIES TO THE JOINT VENTURE MUST PROVIDE A COMPLETED FORM.

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p> 	<p>Date Received</p> 	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <div style="text-align: center;"> <hr style="width: 50%; margin: 0 auto;"/> <p>Name of Officer</p> </div>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <div style="margin-left: 40px;"> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> </div>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p> 		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%;"> <hr style="width: 80%; margin: 0;"/> <p>Signature of vendor doing business with the governmental entity</p> </div> <div style="width: 35%;"> <hr style="width: 80%; margin: 0;"/> <p>Date</p> </div> </div>		



Texas Sales and Use Tax Exemption Certification

This certificate does not require a number to be valid.

Name of purchaser, firm or agency City of New Braunfels	
Address (Street & number, P.O. Box or Route number) 550 Landa St	Phone (Area code and number) 830-221-4380
City, State, ZIP code New Braunfels, TX 78130	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____

Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

The contractor may purchase all labor, materials, supplies, and equipment to be incorporated in the City of New Braunfels project that is completely consumed at the project job-site which serves as integral to the performance of the contract for the project without paying sales or use tax in accordance with State Comptroller rule 3.291.
Tax exempt municipality # 1-74-6001774-6

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

sign here	Purchaser <i>Sandy Pauls</i>	Title Director of Finance	Date 1/26/2023
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier.
Do not send the completed certificate to the Comptroller of Public Accounts.

BID BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF _____ §

That we, _____, as Principal herein, and _____, a corporation organized and existing under the laws of the State of _____, and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the **City of New Braunfels, Texas**, located in **Comal County, Texas**, Obligee herein, in the sum of _____ Dollars (\$_____) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Proposal, dated the _____ day of _____, 20____, which is hereto attached and made a part hereof for all purposes, for the construction of the following project: Common Street Pedestrian Improvements.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, if the said Principal shall not withdraw said Proposal within the period specified therein after the opening of same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into written Contract with the Obligee in accordance with the Proposal as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, or in the event of the withdrawal of said Proposal within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Proposal and the amount for which the Obligee may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20__.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

ATTEST:

Secretary

(S E A L)

Witness as to Surety

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____
Attorney in Fact

Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

PERFORMANCE BOND

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF _____

§

§

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, Texas, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligor herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligor dated the _____ day of _____, 20____, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of the following project: Common Street Pedestrian Improvements.

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligor from all costs and damages which Obligor may suffer by reason of Principal's failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligor for all outlay and expense that Obligor may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligor to be in default under the Contract, the Surety shall, upon request of Obligor and within seven (7) calendar days from receipt of Obligor's notice of Contractor's default, commence and thereafter complete performance of Contractor's obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby

waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

ATTEST:

Secretary

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____

Attorney in Fact

(S E A L)

Address: _____

Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

City of New Braunfels
550 Landa St.
New Braunfels, Texas 78130

By: _____

Title: _____

Date:_____

Certificate of Interested Parties (Form 1295)

Texas Government Code Section 2252.908, and the rules issued by the Texas Ethics Commission (TEC) found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed **Certificate of Interested Parties (Form 1295)** to the City before the City may enter into a contract with that business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Standard Filing Process: **Form 1295** is accessible at, and must be completed online, at the following web address: <https://www.ethics.state.tx.us/filinginfo/1295/>

A business entity must enter the required information as directed on Form 1295 and then print a copy of the completed form after it has been submitted online. It is important to note that the information that is required in 'Certification Number' and 'Date Filed' fields in the 'Certification of Filing' box on the form will not be generated until the form has been submitted, not saved. An authorized agent of the business entity must then complete the information required in the "Unsworn Declaration" field of the form and sign the printed copy of the form, containing the unique Certification Number and filing date. The completed and signed Form 1295 must be filed with the governmental body or state agency with which the business entity is entering into the contract; the governmental body or state agency will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website.

Solicitation Document: If a completed Form 1295 is requested in a solicitation document issued by the City, Respondent shall reference the City's solicitation number in Box 3 of the form as a contract number is not generated until the award of a contract by City Council. Respondents must submit the original signed form with their response to the solicitation. The City will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website after the contract has been awarded.

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 12/22/2017

STATEMENT ON CONVICT PRODUCED MATERIAL & CONVICT LABOR

Each bidder agrees to abide by the Federal Highway Administration's requirements 23CFR § 635.117 and 23 CFR § 635.417. Below is a reprint of the requirements. Both items refer to hiring convict labor or buying convict-produced materials.

Sec. 635.117 Labor and employment

- (a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the STD unless it is labor performed by convicts who are on parole, supervised release, or probation.
- (b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.
- (c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230.41, CFR part 60 and Exec. Order No. 11246 (Sept 24, 1965), 3 CFR 339 (1964-1965), as amended.
- (d) Pursuant to 23 U.S.C. 140(d), it is permissible for STD's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core- crew employee to meet a preference goal.
- (e) Project eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.
- (f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

Sec. 635.417 Convict produced materials.

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

	CERTIFICATE OF INSURANCE	Form 1560 (Rev. 8/18) Previous editions of this form may not be used. Page 1 of 2
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Agents should complete this form by providing all requested information, then either email, fax, or mail this form as noted at the bottom of page two. Copies of endorsements listed below are not required as attachments to this certificate.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the certificate.

Insured: _____
 Street/Mailing Address: _____
 City/State/Zip: _____
 Phone Number: () - -

WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: _____			Carrier Phone #: () - -	
Address: _____			City, State, Zip: _____	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation				Not Less Than: Statutory - Texas

COMMERCIAL GENERAL LIABILITY INSURANCE:

Carrier Name: _____			Carrier Phone #: () - -	
Address: _____			City, State, Zip: _____	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Commercial General Liability Insurance				Not Less Than: \$ 600,000 each occurrence

BUSINESS AUTOMOBILE POLICY:

Carrier Name: _____			Carrier Phone #: () - -	
Address: _____			City, State, Zip: _____	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Business Automobile Policy				Not Less Than: \$ 600,000 combined single limit

UMBRELLA POLICY (if applicable):

Carrier Name: _____			Carrier Phone #: () - -	
Address: _____			City, State, Zip: _____	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Umbrella Policy				

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

Agency Name _____ **Address** _____ **City, State, Zip Code** _____

() - -
Authorized Agent's Phone Number _____ **Authorized Agent Original Signature** _____ **Date** _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Form 1560 (Rev. 8/18)
Page 2 of 2

NOTES TO AGENTS:

Agents must provide all requested information then either email, fax, or mail this form as noted below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount on an Acord Form.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

List the contractor's legal company name, including the DBA (doing business as) name as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor/client company in parenthesis.

The Texas Department of Insurance (TDI) approved forms are the only acceptable proof of insurance for department contracts. The preferred Certificate of Insurance (COL) is on a 1560 or Acord form.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TxDOT.

The **SIGNATURE** of the agent is required.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMMERCIAL GENERAL LIABILITY INSURANCE:

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

BUSINESS AUTOMOBILE POLICY:

If coverages are specified separately, they must be at least these amounts

Bodily Injury	\$500,000 each occurrence
	\$100,000 each occurrence
Property Damage	\$100,000 for aggregate

PRIVATE AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for a Business Automobile Policy.

Completed forms may be submitted by any of the following methods:

Email: CST_Insurance@txdot.gov
Fax: (512) 416-2536
Mail: Texas Department of Transportation
CST – Contract Processing
125 E. 11th Street
Austin, TX 78701-2483

[Contact/Help](#)

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- (i) Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- (ii) Provide City of New Braunfels a waiver of subrogation.
- (iii) Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- (iv) Provide the City Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting the following coverages.

TYPE OF INSURANCE	<u>Amount of Insurance</u>	
Commercial General Liability		
(Public) Liability to include coverage for:	Each Occurrence	\$1,000,000
a) Premises/Operations	General Aggregate	\$2,000,000
b) Products/Completed Operations		
c) Independent Contractors		
d) Personal Liability	Umbrella/Excess Liability	
e) Contractual Liability	(follow-form)	2,000,000
Builders' Risk	100% Construction Value	
Business Auto Liability	<ul style="list-style-type: none">• \$1,000,000 per occurrence• \$1,000,000 aggregateor;• \$1,000,000 combined single limits	
Workers' Compensation/Employers Liability	Statutory Limits \$1,000,000 each accident	
<i>Workers' Compensation (required by law for companies with 50+ employees or political subdivision)</i>		
Professional Liability	Professional types of coverage are based upon exposures and should be added during contact formation.	
E & O Coverage		
Cyber Liability		
	Statutory	
Employers Liability		
Each Accident		\$1,000,000
Policy Limit by Disease		\$1,000,000
Each Employee by Disease		\$1,000,000

**CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN
FIELD INSPECTION AND MAINTENANCE REPORT**

Form 2118
(Rev. 4/20)
Page 1 of 2
[Instructions](#)

Project Information

Inspection Cycle (select only one):
☐ At least once every 7 calendar days.
☐ At least once every 14 calendar days and within 24 hours after 0.5 inches or more of rainfall.
☐ *Other _____

CSJ: _____
 Project: _____
 Highway: _____
 County: _____

Inspection Date: _____
 TCEQ Authorization No.: _____
 Date of Last Rainfall: _____
 Amount of Last Rainfall: _____ (inches)

*For "other" options, the Engineer must verify compliance with Part III.F.7(c) of the TPDES Construction General Permit (CGP) and approve revisions to the SWP3.

Inspected Best Management Practice (BMP)/Areas

All of these BMPs/areas must be inspected when present on the right-of-way

☐ Disturbed areas

☐ Concrete truck wash out areas

☐ Material stockpiles

☐ Construction material storage areas

☐ Discharge locations

☐ Areas where litter/debris/trash collect

☐ Areas where vehicles enter/leave site

☐ Parking/equipment storage areas

☐ Erosion control BMPs

☐ Areas that generate dust

☐ Portable sanitary facilities

☐ Chemical/fuel storage areas

☐ Sediment control BMPs

☐ Postings

Other _____

Corrective Actions, Maintenance, Upgrading or Additional Controls

Except the items listed below, all areas/BMPs indicated above have been inspected and do not require maintenance, upgrading or additional controls. If multiple highways or project locations are involved, identify the highway or project location of the BMPs/areas requiring maintenance or improvement. Document all changes to the SWP3.

Station(s) or Location	Left or Right of Centerline	Issue/BMP	Corrective Action	Priority*	Date of Corrective Action Completed
	▼	▼		▼	▼
Other/Notes	▼	▼	Cause	▼	▼
	▼	▼		▼	▼
Other/Notes	▼	▼	Cause	▼	▼
	▼	▼		▼	▼
Other/Notes	▼	▼	Cause	▼	▼
	▼	▼		▼	▼
Other/Notes	▼	▼	Cause	▼	▼
	▼	▼		▼	▼
Other/Notes	▼	▼	Cause	▼	▼

* High - must be addressed immediately; all other project work is stopped until issue is resolved.
 Med - address as soon as practicable or as directed; other work can continue.
 Low - address within 7 days or before the next rainfall event.

Add Additional Table to Last Page

Contact/Help

Form 2118 (Rev. 4/20)
Page 2 of 2

Erosion Control and Stabilization

When construction activities permanently cease, or temporarily cease and are not expected to resume for 14 or more days, on a disturbed portion of the site, erosion control and stabilization measures must be initiated immediately, unless excluded by Part III.F.2(b)(iii) of the CGP. Indicate the stabilization measures that have been initiated under these circumstances.

Station	Left or Right of Centerline	Stabilization Measure	Date Initiated	Other/Notes
to				
to				
to				
to				
to				

Compliance Certification

Check One and Complete Signature.

- ☐ The site is in potential non-compliance with the CGP and/or the SWP3. Potential non-compliance issues are described below. Immediately notify Engineer of potential non-compliance.
☐ With the corrective actions noted (if any), the site is in compliance with the CGP regulations and the SWP3.

TxDOT's Representative's Name (Print clearly): _____ Title: _____ Date: _____
TxDOT's Representative's Signature: _____

The inspection report must be completed upon completion of inspection but no later than 24 hours, Part III.F.7(f) of the TPDES CGP.

Potential Non-Compliance Issues

Potential non-compliance issues may include the failure to address previously noted corrective actions, repeated failure of a control measure, off-site discharges of sediment, off-site discharges of other pollutants, or other potential non-compliance issues identified in the CGP. Notify the Engineer immediately of potential non-compliance issues.

Station	Left or Right of Centerline	Describe Potential Non-Compliance Issue. If discharge is present during inspection, inspect all discharge points from the site and document the visual quality of the discharge if it indicates pollutants in stormwater (i.e. floating, settled, or suspended solids; unnatural color, foam, oil sheen, or other indicators of pollutants in stormwater). Part III.F.7(b)(vi).
to		
to		
to		
to		
to		

Contractor Notification

Furnish a copy of this inspection report to the Contractor within one calendar day of the inspection. Corrective actions must be taken as soon as possible and before the next anticipated rain event, but in no case later than 7 calendar days after being able to access the site. If corrective actions are not made within this timeframe and become potential noncompliance issues, other work on the project may be suspended by the Engineer. Time charges will continue until the project is brought into compliance and documentation of corrective action is provided. This in no way releases the contractor of liability for noncompliance.

Contractor's Representative's Name (Print clearly): _____ Title: _____ Date: _____
Contractor's Representative's Signature: _____

Inspection Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

TxDOT's Certifying Representative's Name (Print clearly): _____ Title: _____ Date: _____
TxDOT's Certifying Representative's Signature: _____

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

CONTRACTOR ACKNOWLEDGMENT OF STORMWATER MANAGEMENT PROGRAM

I hereby acknowledge that I am aware of the Stormwater Management Program and standard operating procedures developed by the City of New Braunfels in compliance with the TPDES General Permit No. TXR40000. I agree to comply with all applicable best management practices and standard operating procedures while conducting my services for the City of New Braunfels. I agree to conduct all services in a manner that does not introduce illicit discharges of pollutants to streets, stormwater inlets, drainage ditches or any portion of the drainage system. The following materials and/or pollutant sources must not be discharged to the drainage system as a result of any services provided:

1. Grass clippings, leaves, mulch, rocks, sand, dirt or other waste materials resulting from landscaping activities, (except those materials resulting from ditch mowing or maintenance activities)
2. Herbicides, pesticides and/or fertilizers, (except those intended for aquatic use)
3. Detergents, fuels, solvents, oils and/or lubricants, other equipment and/or vehicle fluids,
4. Other hazardous materials including paints, thinners, chemicals or related waste materials,
5. Uncontrolled dewatering discharges, equipment and/or vehicle wash waters,
6. Sanitary waste, trash, debris, or other waste products
7. Wastewater from wet saw machinery,
8. Other pollutants that degrade water quality or pose a threat to human health or the environment.

Furthermore, I agree to notify the City of New Braunfels immediately of any issue caused by or identified by _____ that is believed to be an immediate threat to human health or the environment.

Bidder's full name and entity status:

Company's Name

Signature, Authorized Representative of Bidder

Title

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT 1

CITY OF NEW BRAUNFELS CONSTRUCTION PROJECT MANUAL

The Construction Project Manual for the City of New Braunfels is posted on the City's website at the following link:

<https://www.newbraunfels.gov/DocumentCenter/View/14291/Construction-Project-Manual---Sections-6-29>

ATTACHMENT 2

ENGINEER'S SEAL AND CONSTRUCTION SPECIFICATIONS

County: Comal
Project: Common Street Pedestrian
Improvements

Control: 0915-17-076
Highway: Common St
Limits: Liberty Ave to Loop 337

The enclosed Texas Department of Transportation Specifications, Special Provisions, General Notes and Specification Data in this document have been selected by me, or under my responsible supervision, as being applicable to the project.

Seal



A handwritten signature in cursive script, appearing to read "ghosh", written over a horizontal line.

Ashish Ghosh, P.E.

04/17/2024

Date

[See Attachment]