



AGENDA STAFF REPORT

DATE: July 19, 2018

TO: Mayor and City Council

PREPARED BY: David B. Dale, City Manager *DD*

SUBJECT:

- a. Reject the Bid Submitted by Granite Construction Company as Nonresponsive for Failure to Demonstrate Good Faith Efforts to Comply With Federal Disadvantaged Business Enterprise Regulations.
- b. Award a Contract to Pyramid Construction and Aggregates, Inc., as the Lowest Responsible Bidder Submitting a Responsive Bid, in the Amount of \$5,984,593.00 (base bid) + \$37,625.00 (additive bid) for Cesar Chavez Blvd. Improvements - Federal Project No. HPLUL-5168(017).
- c. Authorize the City Manager to Sign the Construction Contract between the City of Calexico and Pyramid Construction and Aggregates, Inc., for Cesar Chavez Blvd. Improvements - Federal Project No. HPLUL-5168(017).

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Recommendation:

It is recommended that the City Council of the City of Calexico approve the following:

- a. Reject the bid submitted by Granite Construction Company as nonresponsive for failure to demonstrate Good Faith Efforts to comply with federal Disadvantaged Business Enterprise regulations.
- b. Award a contract to Pyramid Construction and Aggregates, Inc., as the lowest responsible bidder submitting a responsive bid, in the amount of \$5,984,593.00 (base bid) + \$37,625.00 (additive bid) for Cesar Chavez Blvd. Improvements - Federal Project No. HPLUL-5168(017).
- c. Authorize the City Manager to sign the construction contract between the City of Calexico and Pyramid Construction and Aggregates, Inc., for Cesar Chavez Blvd. Improvements –

**AGENDA
ITEM
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Background:

The City of Calexico Public Works Department has received a grant from the United States Department of Transportation for construction in the amount of \$7,104,240.00 (Federal \$5,500,000.00 and Local Match \$1,604,240.00) for Cesar Chavez Blvd./Calexico-West Port of Entry between HWY 98 and Second Street - Federal Project No. HPLUL-5168(017).

On April 29, 2018, the City requested bids for Cesar Chavez Blvd. Improvements - Federal Project No. HPLUL-5168(017). The proposed work includes, but is not limited to, the construction of street improvements; street light installation; traffic control; excavation; placement and compaction of fill materials; PCC curb and gutter; sidewalk; raised median; curb ramps; retaining wall; block wall; asphalt concrete paving over base; traffic signal modification; installing new traffic signal; mast arms; foundations; thermoplastic pavement markings and traffic striping.

The project involves roadway improvements and street widening throughout. It is the intent of the project to widen Cesar Chavez Blvd. to provide two through lanes in the northbound direction and three lanes in the southbound direction to install a traffic signal at the intersection of Cesar Chavez Blvd. at Grant Street, and to modify the existing traffic signal at Cesar Chavez Blvd. at Second Street.

Discussion & Analysis:

On May 24, 2018, the City received four (4) bids:

	Company	Base Bid	Additive Bid
1	Granite Construction	\$5,957,460.00	\$201,875.00
2	Pyramid Construction	\$5,984,593.00	\$37,625.00
3	Hazard Construction	\$6,694,830.00	\$241,750.00
4	Sully-Miller Contracting	\$7,830,000.00	\$233,000.00

Granite Construction Company submitted the lowest base bid of \$5,957,460. Because the project is federally funded, all bidders were required to comply with federal Disadvantaged Business Enterprise (“DBE”) regulations, codified at Title 49, Code of Federal Regulations, Part 26. As part of this requirement, bidders were required to meet the contract DBE goal of 15% or demonstrate good faith efforts to do so. Granite Construction Company did not meet the contract DBE goal of 15%; therefore, the City was required to engage in a determination of whether Granite Construction Company made good faith efforts to do so via a review of the good faith efforts documentation submitted with the bid.

On or about June 18, 2018, the City received a Memorandum regarding Granite Construction Company’s good faith efforts documentation from the California Department of Transportation, Division of Local Assistance (“Caltrans”). Following review of the good faith efforts documentation, Caltrans determined Granite Construction Company did not adequately demonstrate good faith efforts to meet the contract DBE goal. After carefully reviewing all bid documentation from Granite Construction Company, the City determined Granite Construction Company did not meet the 15% DBE goal nor make adequate good faith efforts to do so in accordance with Title 49, Code of Federal Regulations, Part 26.

On July 12, 2018, the City provided verbal notice to Granite Construction Company that it intended to reject the Granite bid based on its failure to comply with federal DBE regulations and provide adequate documentation of good faith efforts to meet the contract DBE goal. Granite Construction Company requested administrative reconsideration of the City's determination. The City engaged in the administrative reconsideration process in accordance with Title 49, Code of Federal Regulations, Section 26.53(d). On July 16, 2018, a reconsideration hearing was held to provide Granite Construction Company an opportunity to appeal the finding of nonresponsiveness based on its failure to meet federal DBE regulations. On July 17, 2018, a written decision on reconsideration was provided to Granite Construction Company explaining the basis for the finding that Granite Construction Company did not meet the contract DBE goal and failed to make adequate good faith efforts to do so.

Based on the foregoing, Public Works Staff requests the City Council of the City of Calexico reject the bid submitted by Granite Construction Company as nonresponsive for failure to comply with federal DBE regulations and award a contract to Pyramid Construction and Aggregate, Inc., as the lowest responsible bidder submitting a responsive bid, in the amount of \$5,984,593.00 (base bid) + \$37,625.00 (additive bid) for the Cesar Chavez Blvd. Improvements - Federal Project No. HPLUL-5168(017). Pyramid Construction and Aggregate, Inc., met the 15% contract DBE goal thereby satisfying federal DBE regulations. Public Works Staff also requests the City Council authorize the City Manager to sign the construction contract with Pyramid Construction and Aggregate, Inc.

Fiscal Impact:

Federal Grant	\$5,500,000.00
SB 1 – Local Match	\$522,219.00
Total	<hr/> \$6,022,219.00

Coordinated With:

Public Works Department.

Attachment(s):

1. Bid Tabulation Sheet.
2. Pyramid Construction Bid.
3. Hazard Construction Bid.
4. Sully-Miller Contracting Bid.
5. Granite Construction Bid.
7. Pyramid Construction and Aggregates, Inc. Contract.

CITY OF CALEXICO
CESAR CHAVEZ BLVD. IMPROVEMENTS
FEDERAL AID PROJECT NO. HPLUL-5168(017)

Date: May 24, 2018
 Time: 2:00p.m.
 Location: City Hall, Office of the City Clerk, 608 Heber Avenue, Calexico, CA

BASE BID

Item No.	Approximate Quantity	Unit	Description	ENGINEER'S ESTIMATE		GRANITE CONSTRUCTION		PYRAMID CONSTRUCTION		HAZARD CONSTRUCTION		SULLY MILLER CONTRACTING	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	1 LS	LS	Mobilization	150,000.00	150,000.00	75,000.00	75,000.00	683,000.00	683,000.00	100,000.00	100,000.00	470,625.00	470,625.00
2	1 LS	LS	Traffic Control	175,000.00	175,000.00	110,145.00	110,145.00	200,000.00	200,000.00	546,500.00	546,500.00	135,000.00	135,000.00
3	1 LS	LS	Water Pollution Control	75,000.00	75,000.00	13,000.00	13,000.00	100,000.00	100,000.00	100,000.00	100,000.00	18,000.00	18,000.00
4	20,000	CY	Unclassified Excavation	25.00	500,000.00	32.00	640,000.00	25.00	500,000.00	23.00	460,000.00	35.00	700,000.00
5	1 LS	LS	Clearing, Grubbing and Removals	125,000.00	125,000.00	119,000.00	119,000.00	70,500.00	70,500.00	450,000.00	450,000.00	300,000.00	300,000.00
6	8,850	LF	Construct 8" Curb and Gutter	35.00	309,750.00	28.00	247,800.00	29.65	262,402.50	29.00	256,650.00	24.00	212,400.00
7	640	LF	Construct 6" Curb and Gutter	30.00	19,200.00	31.00	19,840.00	36.00	23,040.00	31.00	19,840.00	33.00	21,120.00
8	7,400	LF	Construct 6" Curb	25.00	185,000.00	13.20	97,680.00	25.30	187,220.00	19.00	140,600.00	19.00	140,600.00
9	14,850	TON	Construct A.C. Pavement	100.00	1,485,000.00	111.00	1,648,350.00	87.88	1,305,018.00	90.00	1,336,500.00	96.00	1,425,600.00
10	7,300	SF	Construct 10" Thick P.C.C. Pavement	15.00	109,500.00	13.50	98,550.00	13.55	98,915.00	8.00	58,400.00	8.00	58,400.00
11	42,000	SF	Construct 6" P.C.C. Sidewalk	8.00	336,000.00	8.50	357,000.00	8.54	358,680.00	7.30	306,600.00	8.00	336,000.00
12	16,235	CY	Crushed Miscellaneous Base	30.00	487,050.00	39.00	633,165.00	14.10	228,913.50	44.00	714,340.00	60.00	974,100.00
13	15 EA	EA	Construct Curb Ramp per APWA	5,000.00	75,000.00	3,700.00	55,500.00	3,582.00	53,730.00	2,800.00	42,000.00	3,000.00	45,000.00
14	1 EA	EA	Construct Type B Passageway	8,000.00	8,000.00	10,000.00	10,000.00	3,380.00	3,380.00	2,000.00	2,000.00	20,000.00	20,000.00
15	3 EA	EA	Install Detectable Warning Surface	500.00	1,500.00	1,200.00	3,600.00	400.00	1,200.00	500.00	1,500.00	535.00	1,605.00
16	5,800	SF	Construct P.C.C. Driveway As Shown on Plans	10.00	58,000.00	13.50	78,300.00	10.30	59,740.00	10.00	58,000.00	11.00	63,800.00
17	500	SF	Construct P.C.C. Cross Gutter	20.00	10,000.00	25.00	12,500.00	18.55	9,175.00	50.00	25,000.00	16.00	8,000.00
18	13 EA	EA	Adjust Sanitary Sewer/Utility to Grade	1,000.00	13,000.00	1,850.00	24,050.00	1,000.00	13,000.00	1,000.00	13,000.00	1,600.00	20,800.00
19	17 EA	EA	Vault/Valve/Meter To Be Relocated	1,500.00	25,500.00	1,400.00	23,800.00	2,000.00	34,000.00	1,500.00	25,500.00	3,000.00	51,000.00
20	22 EA	EA	Vault/Valve/Meter To Be Adjusted to Grade	1,000.00	22,000.00	1,000.00	22,000.00	800.00	17,600.00	800.00	17,600.00	1,400.00	30,800.00
21	5 EA	EA	Relocate and/or Modify Fire Hydrant to Grade	1,500.00	7,500.00	5,500.00	27,500.00	6,000.00	30,000.00	10,000.00	50,000.00	18,000.00	90,000.00
22	1,150	LF	Construct Chain Link Fence	50.00	57,500.00	72.00	82,800.00	30.00	34,500.00	25.00	28,750.00	100.00	115,000.00
23	8 EA	EA	Remove/Relocate Existing Post	1,000.00	8,000.00	600.00	4,800.00	220.00	1,760.00	1,000.00	8,000.00	450.00	3,600.00
24	1 EA	EA	Relocate Existing Mailboxes	250.00	250.00	530.00	530.00	220.00	220.00	500.00	500.00	450.00	450.00
25	1,800	LF	Replace Wall and Fence in Kind	200.00	360,000.00	120.00	216,000.00	63.00	113,400.00	90.00	162,000.00	225.00	405,000.00
26	750	LF	Construct Block Slough Wall	100.00	75,000.00	78.00	58,500.00	45.00	33,750.00	60.00	45,000.00	175.00	131,250.00
27	3 EA	EA	Construct Under Sidewalk Drain	5,000.00	15,000.00	2,400.00	7,200.00	3,000.00	9,000.00	3,000.00	9,000.00	10,000.00	30,000.00
28	1 LS	LS	Construct Reinforced Concrete Retaining Wall	400,000.00	400,000.00	500,000.00	500,000.00	651,000.00	651,000.00	950,000.00	950,000.00	850,000.00	850,000.00
29	58 EA	EA	Construct Median Break	1,000.00	58,000.00	445.00	25,810.00	650.00	37,700.00	500.00	29,000.00	2,500.00	145,000.00
30	1 EA	EA	Traffic Signal - Cesar Chavez Blvd at Grant Street	320,000.00	320,000.00	306,000.00	306,000.00	285,000.00	285,000.00	280,000.00	280,000.00	450,000.00	450,000.00
31	1 LS	LS	Traffic Signal - Cesar Chavez Blvd at Second Street only poles G and H	280,000.00	280,000.00	29,000.00	29,000.00	30,000.00	30,000.00	28,000.00	28,000.00	55,000.00	55,000.00
32	1 LS	LS	Signing and Striping	120,000.00	120,000.00	100,000.00	100,000.00	150,000.00	150,000.00	75,000.00	75,000.00	90,000.00	90,000.00

CITY OF CALEXICO
 CESAR CHAVEZ BLVD. IMPROVEMENTS
 FEDERAL AID PROJECT NO. HPLUL-5168(017)

33	1	LS	Street Lighting	150,000.00	150,000.00	165,000.00	165,000.00	165,000.00	150,000.00	185,000.00	185,000.00	95,000.00	95,000.00
34	4,700	SF	Construct 6" PCC Driveway Transition	10.00	47,000.00	11.00	51,700.00	20.00	94,000.00	9.00	42,300.00	12.00	56,400.00
35	25	EA	Remove Existing Trees and Roots	1,000.00	25,000.00	600.00	15,000.00	600.00	15,000.00	650.00	16,250.00	2,450.00	61,250.00
36	60	LF	Furnish And Install K-Rail	100.00	6,000.00	89.00	5,340.00	100.00	6,000.00	100.00	6,000.00	160.00	9,600.00
37	1	LS	Construction Surveying and Monumentation	75,000.00	75,000.00	55,000.00	55,000.00	100,000.00	100,000.00	61,000.00	61,000.00	60,000.00	60,000.00
38	4,500	CY	Unclassified Fill	70.00	315,000.00	4.00	18,000.00	7.50	33,750.00	10.00	45,000.00	30.00	135,000.00
					<u>6,488,750.00</u>		<u>5,957,460.00</u>		<u>5,984,594.00</u>		<u>6,694,830.00</u>		<u>7,830,000.00</u>

Base Bid Total

ADDITIVE ALTERNATE #1 BID

A1	1,250	TON	AC Pavement	100.00	125,000.00	114.00	142,500.00	8.88	11,000.00	107.00	133,750.00	110.00	137,500.00
A2	1,250	CY	Crushed Miscellaneous Base Signing and Striping - Double Yellow instead of Raised	30.00	37,500.00	39.50	49,375.00	14.10	17,625.00	78.00	97,500.00	70.00	87,500.00
A3	1	LA	Median	10,000.00	10,000.00	10,000.00	10,000.00	9,000.00	9,000.00	10,500.00	10,500.00	8,000.00	8,000.00
					<u>172,500.00</u>		<u>201,875.00</u>		<u>37,625.00</u>		<u>241,750.00</u>		<u>233,000.00</u>

Additive Total

PROPOSAL BID FORM

TO THE PUBLIC WORKS DIRECTOR/CITY ENGINEER OF THE CITY OF CALEXICO:

The undersigned hereby declares that he has carefully examined the location of the proposed work that he has examined the plans and specifications and read the accompanying instructions to bidders and hereby proposes to furnish all material except owner furnished materials, and do all work required to complete the said work in accordance with said plans and specifications and special provisions for the unit prices set forth in the following schedule. The bidder shall furnish prices for all items shown in the proposal.

Name of firm: Pyramid Construction and Aggregates, Inc.

Item No.	Approximate Quantity	Unit	Description	Unit Price	Total Price
1	1	LS	Mobilization	683,000.00	683,000.00
2	1	LS	Traffic Control	200,000.00	200,000.00
3	1	LS	Water Pollution Control	100,000.00	100,000.00
4	20,000	CY	Roadway Excavation	25.00	500,000.00
5	1	LS	Clearing, Grubbing and Removals	70,500.00	70,500.00
6	8,850	LF	Construct 8" Curb and Gutter	29.65	262,402.50
7	640	LF	Construct 6" Curb and Gutter	36.00	23,040.00
8	7,400	LF	Construct 6" Curb	25.30	187,220.00
9	14,850	TON	Construct A.C. Pavement	87.88	1,305,018.00
10	7,300	SF	Construct 10" Thick P.C.C. Pavement	13.55	98,915.00
11	42,000	SF	Construct 6" P.C.C. Sidewalk	8.54	358,680.00
12	16,235	CY	Crushed Miscellaneous Base	14.10	228,913.50
13	15	EA	Construct Curb Ramp per APWA	3,582.00	53,730.00
14	1	EA	Construct Type B Passageway	3,380.00	3,380.00
15	3	EA	Install Detectable Warning Surface	400.00	1,200.00
16	5,800	SF	Construct P.C.C. Driveway As Shown on Plans	10.30	59,740.00
17	500	SF	Construct P.C.C. Cross Gutter	18.35	9,175.00

18	13	EA	Adjust Sanitary Sewer/Utility to Grade	1,000.00	13,000.00
19	17	EA	Vault/Valve/Meter To Be Relocated	2,000.00	34,000.00
20	22	EA	Vault/Valve/Meter To Be Adjusted to Grade	800.00	17,600.00
21	5	EA	Relocate and/or Modify Fire Hydrant to Grade	6,000.00	30,000.00
22	1,150	LF	Construct Chain Link Fence	30.00	34,500.00
23	8	EA	Remove/Relocate Existing Post	220.00	1,760.00
24	1	EA	Relocate Existing Mailboxes	220.00	220.00
25	1,800	LF	Replace Wall and Fence in Kind	63.00	113,400.00
26	750	LF	Construct Block Slough Wall	45	33,750.00
27	3	EA	Construct Under Sidewalk Drain	3000	9,000.00
28	1	LS	Construct Reinforced Concrete Retaining Wall	651000	651,000.00
29	58	EA	Construct Median Break	650	37,700.00
30	1	LS	Traffic Signal -Cesar Chavez Blvd at Grant Street	285000	285,000.00
31	1	LS	Traffic Signal - Cesar Chavez Blvd at Second Street only poles G and H	30000	30,000.00
32	1	LS	Signing and Striping	150,000.00	150,000.00
33	1	LS	Street Lighting	150,000.00	150,000.00
34	4,700	SF	Construct 6" PCC Driveway Transition	20	94,000.00
35	25	EA	Remove Existing Trees and Roots	600	15,000.00
36	60	LF	Furnish And Install K-Rail	100	6,000.00
37	1	LS	Construction Surveying and Monumentation	100,000.00	100,000.00
38	4,500	CY	Unclassified Fill	7.5	33,750.00

Grand Total Bid: \$5,984,593.00

Grand Total Bid Price Written in words: Five million, nine hundred eight four, five hundred ninety three dollars and zero cents.

1.00 – The undersigned hereby acknowledges the receipt of the following addendum:

None _____; No. 1 x ; No. 2 x ; No. 3 x ; No. 4 _____; No. 5 _____

CITY OF CALEXICO

BID SHEET – ADDITIVE ALTERNATE #1

**CESAR CHAVEZ BLVD. IMPROVEMENTS
(FEDERAL-AID PROJECT NO.:HPLUL-5168(017))**

NAME OF COMPANY: Pyramid Construction and Aggregates, Inc.

To the Honorable Mayor and Members of the City Council:

This Additive Alternate #1 will provide bid prices to construct additional AC Pavement and Double yellow Striping instead of the proposed raised median along Cesar Chavez Boulevard. The City may or may not award this work at their discretion, depending upon available funding. The bid prices shall provide full payment for complete construction of the anticipated work. Determination of the lowest responsive bidder will be based on the Base Bid, and will not include this Additive Alternate bid.

Item No.	Description	Estimated Quantity	Unit Meas.	Unit Price	Total Amount
A1	AC Pavement	1,250	TON	8.88	11,000
A2	Crushed Miscellaneous Base	1,250	CY	14.10	17,625.00
A3	Signing and Striping -Double Yellow Instead of Raised median	1	LS	9000	9,000.00
		TOTAL BID ADD. ALT. #1			37,625.00

TOTAL ADD. ALT. #1 IN WORDS: Thirty seven thousand six hundred twenty five and zero cents

PROPOSAL BID FORM

TO THE PUBLIC WORKS DIRECTOR/CITY ENGINEER OF THE CITY OF CALEXICO:

The undersigned hereby declares that he has carefully examined the location of the proposed work that he has examined the plans and specifications and read the accompanying instructions to bidders and hereby proposes to furnish all material except owner furnished materials, and do all work required to complete the said work in accordance with said plans and specifications and special provisions for the unit prices set forth in the following schedule. The bidder shall furnish prices for all items shown in the proposal.

Name of firm: HAZARD CONSTRUCTION COMPANY

Item No.	Approximate Quantity	Unit	Description	Unit Price	Total Price
1	1	LS	Mobilization	100,000.-	100,000.-
2	1	LS	Traffic Control	546,500.-	546,500.-
3	1	LS	Water Pollution Control	100,000.-	100,000.-
4	20,000	CY	Roadway Excavation	23.-	460,000.-
5	1	LS	Clearing, Grubbing and Removals	450,000.-	450,000.-
6	8,850	LF	Construct 8" Curb and Gutter	29.-	256,650.-
7	640	LF	Construct 6" Curb and Gutter	31.-	19,840.-
8	7,400	LF	Construct 6" Curb	19.-	140,600.-
9	14,850	TON	Construct A.C. Pavement	90.-	1,336,500.-
10	7,300	SF	Construct 10" Thick P.C.C. Pavement	8.-	58,400.-
11	42,000	SF	Construct 6" P.C.C. Sidewalk	7. ³⁰ -	306,600.-
12	16,235	CY	Crushed Miscellaneous Base	44.-	714,340.-
13	15	EA	Construct Curb Ramp per APWA	2,800.-	42,000.-
14	1	EA	Construct Type B Passageway	2,000.-	2,000.-
15	3	EA	Install Detectable Warning Surface	500.-	1,500.-
16	5,800	SF	Construct P.C.C. Driveway As Shown on Plans	10.-	58,000.-
17	500	SF	Construct P.C.C. Cross Gutter	50.-	25,000.-

18	13	EA	Adjust Sanitary Sewer/Utility to Grade	1,000.	13,000.
19	17	EA	Vault/Valve/Meter To Be Relocated	1,500.	25,500.
20	22	EA	Vault/Valve/Meter To Be Adjusted to Grade	800.	17,600.
21	5	EA	Relocate and/or Modify Fire Hydrant to Grade	10,000.	50,000.
22	1,150	LF	Construct Chain Link Fence	25.	28,750.
23	8	EA	Remove/Relocate Existing Post	1,000.	8,000.
24	1	EA	Relocate Existing Mailboxes	500.	500.
25	1,800	LF	Replace Wall and Fence in Kind	90.	162,000.
26	750	LF	Construct Block Slough Wall	60.	45,000.
27	3	EA	Construct Under Sidewalk Drain	3,000.	9,000.
28	1	LS	Construct Reinforced Concrete Retaining Wall	950,000.	950,000.
29	58	EA	Construct Median Break	500.	29,000.
30	1	LS	Traffic Signal - Cesar Chavez Blvd at Grant Street	280,000.	280,000.
31	1	LS	Traffic Signal - Cesar Chavez Blvd at Second Street only poles G and H	28,000.	28,000.
32	1	LS	Signing and Striping	75,000.	75,000.
33	1	LS	Street Lighting	185,000.	185,000.
34	4,700	SF	Construct 6" PCC Driveway Transition	9.	42,300.
35	25	EA	Remove Existing Trees and Roots	650.	16,250. 16,250.
36	60	LF	Furnish And Install K-Rail	100.	6,000.
37	1	LS	Construction Surveying and Monumentation	61,000.	61,000.
38	4,500	CY	Unclassified Fill	10.	45,000.

Grand Total Bid: 6,694,830.

Grand Total Bid Price Written in words: SIX MILLION, SIX HUNDRED NINETY FOUR THOUSAND, EIGHT HUNDRED THIRTY DOLLARS AND NO CENTS

1.00 – The undersigned hereby acknowledges the receipt of the following addendum:

None _____; No. 1 ; No. 2 ; No. 3 ; No. 4 _____; No. 5 _____

CITY OF CALEXICO

BID SHEET – ADDITIVE ALTERNATE #1

CESAR CHAVEZ BLVD. IMPROVEMENTS
(FEDERAL-AID PROJECT NO.:HPLUL-5168(017))

NAME OF COMPANY: HAZARD CONSTRUCTION COMPANY
To the Honorable Mayor and Members of the City Council:

This Additive Alternate #1 will provide bid prices to construct additional AC Pavement and Double yellow Striping instead of the proposed raised median along Cesar Chavez Boulevard. The City may or may not award this work at their discretion, depending upon available funding. The bid prices shall provide full payment for complete construction of the anticipated work. Determination of the lowest responsive bidder will be based on the Base Bid, and will not include this Additive Alternate bid.

Item No.	Description	Estimated Quantity	Unit Meas.	Unit Price	Total Amount
A1	AC Pavement	1,250	TON	107.	133,750.
A2	Crushed Miscellaneous Base	1,250	CY	78.	97,500.
A3	Signing and Striping -Double Yellow instead of Raised median	1	LS	10,500.	10,500.
TOTAL BID ADD. ALT. #1					241,750

TOTAL ADD. ALT. #1 IN WORDS: Two Hundred Forty One Thousand, Seven
Hundred Fifty Dollars And No Cents

PROPOSAL BID FORM

TO THE PUBLIC WORKS DIRECTOR/CITY ENGINEER OF THE CITY OF CALEXICO:

The undersigned hereby declares that he has carefully examined the location of the proposed work that he has examined the plans and specifications and read the accompanying instructions to bidders and hereby proposes to furnish all material except owner furnished materials, and do all work required to complete the said work in accordance with said plans and specifications and special provisions for the unit prices set forth in the following schedule. The bidder shall furnish prices for all items shown in the proposal.

Name of firm: Sully-Miller Contracting Company

Item No.	Approximate Quantity	Unit	Description	Unit Price	Total Price
1	1	LS	Mobilization	470,625.-	470,625.-
2	1	LS	Traffic Control	135,000.-	135,000.-
3	1	LS	Water Pollution Control	18,000.-	18,000.-
4	20,000	CY	Roadway Excavation	35.-	700,000.-
5	1	LS	Clearing, Grubbing and Removals	300,000.-	300,000.-
6	8,850	LF	Construct 8" Curb and Gutter	24.-	212,400.-
7	640	LF	Construct 6" Curb and Gutter	33.-	21,120.-
8	7,400	LF	Construct 6" Curb	19.-	140,600.-
9	14,850	TON	Construct A.C. Pavement	96.-	1,425,600.-
10	7,300	SF	Construct 10" Thick P.C.C. Pavement	10.-	73,000.-
11	42,000	SF	Construct 6" P.C.C. Sidewalk	8.-	336,000.-
12	16,235	CY	Crushed Miscellaneous Base	60.-	974,100.-
13	15	EA	Construct Curb Ramp per APWA	3,000.-	45,000.-
14	1	EA	Construct Type B Passageway	29,000.-	29,000.-
15	3	EA	Install Detectable Warning Surface	535.-	1,605.-
16	5,800	SF	Construct P.C.C. Driveway As Shown on Plans	11.-	63,800.-
17	500	SF	Construct P.C.C. Cross Gutter	16.-	8,000.-

18	13	EA	Adjust Sanitary Sewer/Utility to Grade	1,600.-	20,800.-
19	17	EA	Vault/Valve/Meter To Be Relocated	3,000.-	51,000.-
20	22	EA	Vault/Valve/Meter To Be Adjusted to Grade	1,400.-	30,800.-
21	5	EA	Relocate and/or Modify Fire Hydrant to Grade	18,000.-	99,000.-
22	1,150	LF	Construct Chain Link Fence	100.-	115,000.-
23	8	EA	Remove/Relocate Existing Post	450.-	3,600.-
24	1	EA	Relocate Existing Mailboxes	450.-	450.-
25	1,800	LF	Replace Wall and Fence in Kind	225.-	405,000.-
26	750	LF	Construct Block Slough Wall	175.-	131,250.-
27	3	EA	Construct Under Sidewalk Drain	10,000.-	39,000.-
28	1	LS	Construct Reinforced Concrete Retaining Wall	850,000.-	850,000.-
29	58	EA	Construct Median Break	2,500.-	145,000.-
30	1	LS	Traffic Signal - Cesar Chavez Blvd at Grant Street	459,000.-	459,000.-
31	1	LS	Traffic Signal - Cesar Chavez Blvd at Second Street only poles G and H	55,000.-	55,000.-
32	1	LS	Signing and Striping	90,000.-	90,000.-
33	1	LS	Street Lighting	95,000.-	95,000.-
34	4,700	SF	Construct 6" PCC Driveway Transition	12.-	56,400.-
35	25	EA	Remove Existing Trees and Roots	2,450.-	61,250.-
36	60	LF	Furnish And Install K-Rail	160.-	9,600.-
37	1	LS	Construction Surveying and Monumentation	60,000.-	60,000.-
38	4,500	CY	Unclassified Fill	30.-	135,000.-

Grand Total Bid: 7,830,000.-

Grand Total Bid Price Written in words: Seven Million Eight hundred

thirty thousand dollar

1.00.- The undersigned hereby acknowledges the receipt of the following addendum:

None _____; No. 1 ; No. 2 ; No. 3 ; No. 4 _____; No. 5 _____

CITY OF CALEXICO

BID SHEET - ADDITIVE ALTERNATE #1

CESAR CHAVEZ BLVD. IMPROVEMENTS
(FEDERAL-AID PROJECT NO.:HPLUL-5168(017))

NAME OF COMPANY: Sully-Miller Contracting Company
To the Honorable Mayor and Members of the City Council:

This Additive Alternate #1 will provide bid prices to construct additional AC Pavement and Double yellow Striping instead of the proposed raised median along Cesar Chavez Boulevard. The City may or may not award this work at their discretion, depending upon available funding. The bid prices shall provide full payment for complete construction of the anticipated work. Determination of the lowest responsive bidder will be based on the Base Bid, and will not include this Additive Alternate bid.

Item No.	Description	Estimated Quantity	Unit Meas.	Unit Price	Total Amount
A1	AC Pavement	1,250	TON	110. -	137,500. -
A2	Crushed Miscellaneous Base	1,250	CY	70. -	87,500. -
A3	Signing and Striping -Double Yellow instead of Raised median	1	LS	8,000. -	8,000. -
TOTAL BID ADD. ALT. #1					233,000. -

TOTAL ADD. ALT. #1 IN WORDS: two hundred thirty three thousand

PROPOSAL BID FORM

TO THE PUBLIC WORKS DIRECTOR/CITY ENGINEER OF THE CITY OF CALEXICO:

The undersigned hereby declares that he has carefully examined the location of the proposed work that he has examined the plans and specifications and read the accompanying instructions to bidders and hereby proposes to furnish all material except owner furnished materials, and do all work required to complete the said work in accordance with said plans and specifications and special provisions for the unit prices set forth in the following schedule. The bidder shall furnish prices for all items shown in the proposal.

Name of firm: Granite Construction Company

Item No.	Approximate Quantity	Unit	Description	Unit Price	Total Price
1	1	LS	Mobilization	75,000.00	75,000.00
2	1	LS	Traffic Control	110,145.00	110,145.00
3	1	LS	Water Pollution Control	13,000.00	13,000.00
4	20,000	CY	Roadway Excavation	32.00	640,000.00
5	1	LS	Clearing, Grubbing and Removals	119,000.00	119,000.00
6	8,850	LF	Construct 8" Curb and Gutter	28.00	247,800.00
7	640	LF	Construct 6" Curb and Gutter	31.00	19,840.00
8	7,400	LF	Construct 6" Curb	13.20	97,680.00
9	14,850	TON	Construct A.C. Pavement	111.00	1,648,350.00
10	7,300	SF	Construct 10' Thick P.C.C. Pavement	13.50	98,550.00
11	42,000	SF	Construct 6" P.C.C. Sidewalk	8.50	357,000.00
12	16,235	CY	Crushed Miscellaneous Base	39.00	633,165.00
13	15	EA	Construct Curb Ramp per APWA	3,700.00	55,500.00
14	1	EA	Construct Type B Passageway	10,000.00	10,000.00
15	3	EA	Install Detectable Warning Surface	1,200.00	3,600.00
16	5,800	SF	Construct P.C.C. Driveway As Shown on Plans	13.50	78,300.00
17	500	SF	Construct P.C.C. Cross Gutter	25.00	12,500.00

18	13	EA	Adjust Sanitary Sewer/Utility to Grade	1,850.00	24,050.00
19	17	EA	Vault/Valve/Meter To Be Relocated	1,400.00	23,800.00
20	22	EA	Vault/Valve/Meter To Be Adjusted to Grade	1,000.00	22,000.00
21	5	EA	Relocate and/or Modify Fire Hydrant to Grade	5,500.00	27,500.00
22	1,150	LF	Construct Chain Link Fence	72.00	82,800.00
23	8	EA	Remove/Relocate Existing Post	600.00	4,800.00
24	1	EA	Relocate Existing Mailboxes	530.00	530.00
25	1,800	LF	Replace Wall and Fence in Kind	120.00	216,000.00
26	750	LF	Construct Block Slough Wall	78.00	58,500.00
27	3	EA	Construct Under Sidewalk Drain	2,400.00	7,200.00
28	1	LS	Construct Reinforced Concrete Retaining Wall	500,000.00	500,000.00
29	58	EA	Construct Median Break	445.00	25,810.00
30	1	LS	Traffic Signal - Cesar Chavez Blvd at Grant Street	306,000.00	306,000.00
31	1	LS	Traffic Signal - Cesar Chavez Blvd at Second Street only poles G and H	29,000.00	29,000.00
32	1	LS	Signing and Striping	100,000.00	100,000.00
33	1	LS	Street Lighting	165,000.00	165,000.00
34	4,700	SF	Construct 6" PCC Driveway Transition	11.00	51,700.00
35	25	EA	Remove Existing Trees and Roots	600.00	15,000.00
36	60	LF	Furnish And Install K-Rail	89.00	5,340.00
37	1	LS	Construction Surveying and Monumentation	55,000.00	55,000.00
38	4,500	CY	Unclassified Fill	4.00	18,000.00

Grand Total Bid: 5,957,460.00

Grand Total Bid Price Written in words: Five million, nine hundred fifty seven

thousand, four hundred sixty dollars and zero cents

1.00 - The undersigned hereby acknowledges the receipt of the following addendum:

None _____; No. 1 X; No. 2 X; No. 3 X; No. 4 _____; No. 5 _____

CITY OF CALEXICO

BID SHEET – ADDITIVE ALTERNATE #1

CESAR CHAVEZ BLVD. IMPROVEMENTS
(FEDERAL-AID PROJECT NO.:HPLUL-5168(017))

NAME OF COMPANY: Granite Construction Company

To the Honorable Mayor and Members of the City Council:

This Additive Alternate #1 will provide bid prices to construct additional AC Pavement and Double yellow Striping instead of the proposed raised median along Cesar Chavez Boulevard. The City may or may not award this work at their discretion, depending upon available funding. The bid prices shall provide full payment for complete construction of the anticipated work. Determination of the lowest responsive bidder will be based on the Base Bid, and will not include this Additive Alternate bid.

Item No.	Description	Estimated Quantity	Unit Meas.	Unit Price	Total Amount
A1	AC Pavement	1,250	TON	114.00	142,500.00
A2	Crushed Miscellaneous Base	1,250	CY	39.50	49,375.00
A3	Signing and Striping -Double Yellow instead of Raised median	1	LS	10,000.00	10,000.00
TOTAL BID ADD. ALT. #1					201,875.00

TOTAL ADD. ALT. #1 IN WORDS: Two hundred one thousand eight hundred seventy five dollars and zero cents.

CITY OF CALEXICO, CALIFORNIA

THIS AGREEMENT is made this 18th day of July, 2018, by and between the City of Calexico, a Municipal Corporation of the State of California ("City") and Pyramid Construction and Aggregate, Inc. ("Contractor"). The City and the CONTRACTOR for consideration stated herein agree as follows:

1. Description of Project

CONTRACTOR shall provide for the construction of Cesar Chavez Blvd. Improvements Federal-Aid Project No. HPLUL-5168(017) in accordance with the Invitation for Bids.

2. Description of Work

2.1 CONTRACTOR shall furnish all of the labor, tools, equipment, and services required to perform all of the work in connection with the construction of Calexico New River Parkway Project Phase 1B in accordance with the invitation for Bids, incorporated by reference as though fully set herein. Said construction shall be in accordance with the 2015 California Department of Transportation Standard Plans, Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the General Prevailing Wage rates dated 2018. Said invitation for bids, Standard Plans, Standard Specifications, Labor Surcharge and Equipment Rental Rates, and General Prevailing Wage Rates are as fully a part of the Agreement as if hereto attached or herein repeated.

2.2 The work to be performed under this Agreement shall conform to the plans entitled "Cesar Chavez Blvd. Improvements Federal-Aid Project No. HPLUL-5168(017)", incorporated herein as fully a part of this Agreement as if hereto attached or herein repeated.

3. Time for Completion

The work shall be commenced on the date stated in Notice to Proceed, and shall be completed within the allotted working days after the date stated in such Notice.

4. Compensation

4.1 City will pay the CONTRACTOR for the performance of this Agreement according to the terms and conditions contained in the Project's Invitation for Bids and Proposal or bid submittal by CONTRACTOR. CONTRACTOR will take full payment in accordance with the following item prices incorporated as part of the proposal or bid submitted by CONTRACTOR.

4.2 CONTRACTOR agrees to receive and accept said compensation as full payment for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by CITY and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work in the manner and according to the plans and specification, and the requirements of the CITY Engineer. This provision in no way limits the CONTRACTOR's duties

under other provisions herein.

5. Industry Standards

The CONTRACTOR agrees that its performance, and that of its employees or subcontractors, under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent contractor using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field in the State of California. Where approval by the CITY, the CITY Manager, or other representatives of the CITY is required, it is understood to be general approval only and does not relieve the CONTRACTOR of responsibility for complying with all applicable laws, codes and quality construction and business practices.

6. Insurance

The CONTRACTOR shall not begin performing under this Agreement until it has: (a) obtained insurance certificates reflecting evidence of all insurance required herein; however, the CITY reserves the right to request, and the CONTRACTOR shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each company or companies as required herein; and (c) confirmed that all policies contain the specific provisions required herein. Further the CONTRACTOR shall not modify any policy or endorsement thereto which increases the CITY'S exposure to loss for the duration of this Agreement.

6.1 Types of Insurance.

At all times during the term of this Agreement, CONTRACTOR shall maintain insurance coverage as follows:

6.1.1 Commercial General Liability

For all of the CONTRACTOR'S operations, including contractual, broad form property damage, completed operations, and independent CONTRACTOR'S liability, the CONTRACTOR shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000 for general liability, completed operations and personal injury other than bodily injury. Agreemental liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Agreemental liability limitation endorsement is not acceptable.

6.1.2 Commercial Automobile Liability

For all the CONTRACTOR'S automobiles including owned, hired and non-owned automobiles, the CONTRACTOR shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1,000,000 per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. The CITY shall be named as an additional insured, but only for liability arising out of the use of CONTRACTOR'S automobiles and only arising out of the performance of this Agreement.

6.1.3 Worker's Compensation

For all of the CONTRACTOR's employees who are subject to this Agreement and to the extent required by the State of California, the CONTRACTOR shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1,000,000 of employees liability coverage and the CONTRACTOR shall provide and endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

6.2 Rating Requirements

All bonds used to guarantee work and performance under this Agreement and all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been at least and "A" or "A-" and "V" rating by AM BEST, that are licensed and approved by the State to do business in the State of California, and that have been approved by the CITY.

6.3 Deductibles

All deductibles on any policy shall be the responsibility of the CONTRACTOR.

6.4 Specific Provisions Required

Each policy required under Section 6 herein, shall expressly provide, and an endorsement shall be submitted to the City, that:

6.4.1 Except as to Workers Compensation, the City of Calexico and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The CITY's Additional Insured status must be reflected on additional insured endorsement which shall be submitted to the CITY.

6.4.2 The policies are primary and any insurance that may be carried by the CITY is non-contributing, as reflected in an endorsement which shall be submitted to the CITY.

6.4.3 The policies cannot be canceled, non renewed or materially changed except after thirty calendar days prior written notice by the CONTRACTOR to the CITY by certified mail, as reflected in an endorsement which shall be submitted to the CITY except for non-payment of premium, in which case ten (10) days notice will be provided.

6.4.4 Before performing under this Agreement, the CONTRACTOR shall provide the CITY with all Certificates of Insurance accompanied with all endorsements.

6.4.5 The CONTRACTOR may obtain additional insurance not required by this Agreement.

7. Agreementor Compliance with Labor Code

CONTRACTOR certifies that he is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

8. Control of Agreement

The improvement contemplated in the performance of this contract is a project over which the City of Calexico shall exercise general supervision. The CITY therefore shall have the right to assume full and direct control over this contract whenever the CITY, at its sole discretion, shall determine that its responsibility to the State of California so requires.

9. Conflicting Terms

If an apparent conflict or inconsistency exists between the main body of this Agreement and the bid, proposal or other incorporated document, the main body of this Agreement shall control. If a conflict exists between applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirements shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

10. Indemnification and Hold Harmless Agreement

10.1 With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees (for attorney of CITY's choosing), or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the CONTRACTOR, or the CONTRACTORS's employees, agents, and officers, arising out of any services performed involving this project, the CONTRACTOR agrees to defend, indemnify, protect, and hold harmless the CITY, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the CITY, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the CONTRACTOR, its employees, agents or officers, or any third party. The CONTRACTOR's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the soles negligence or sole willful misconduct of the CITY, its agent, officers or employees. This section in no way alters, affects or modifies any of CONTRACTOR's other obligations and duties herein.

10.2 The CONTRACTOR agrees to pay any and all costs the CITY incurs enforcing the indemnity and defense provisions herein.

11. Notices

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of

this Agreement, unless otherwise agreed in writing, notice to the parties herein shall be addressed as follows:

CITY

City of Calexico
Public Works Department
608 Heber Avenue
Calexico, CA 92231

CONTRACTOR:

12. Non-Assignment

The CONTRACTOR shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the CITY's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the CITY. In no event shall any putative assignment create a contractual relationship between the CITY and any putative assignee.

13. Independent Agreementors

The CONTRACTOR and any SUBCONTRACTORS employed by the CONTRACTOR shall be independent contractors and not agents of the CITY.

14. Compliance with Controlling Law

The CONTRACTOR shall comply with all laws, ordinances, regulations, and policies of the federal, state and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages, including inspection and land surveying work. In addition, the CONTRACTOR shall comply immediately with all directives issues by the CITY or its authorized representatives under authority of any laws, statutes, ordinances, rules or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

Pursuant to the Labor Code of the State of California, or local laws applicable thereto, the CITY has ascertained that the CONTRACTOR shall be responsible for paying prevailing wages as established by the State of California, Director of Industrial Relations. Under Section 1776 of the State Labor Code, the CONTRACTOR, and all subcontractors, are required to keep accurate payroll records. This Section specifies the content thereof, inspection and duplication procedures, and certain notices required of the CONTRACTOR pertaining to their location.

Whenever the CONTRACTOR or any representative, agent or employee Of CONTRACTOR performing a public works project is found by the Department of Industrial Relations ("DIR") or the CITY to be in violation of the prevailing wage requirements imposed by law, the CONTRACTOR shall indemnify and hold CITY harmless from any and all liability arising from such violation, including any and all liability imposed on the City. The CONTRACTOR's duty to indemnify the CITY pursuant to this section shall include any and all costs and expenses incurred by the CITY therefrom,

including but not limited to any penalties imposed on the CITY by DIR or any other state agency and reasonable attorney's fees.

Nothing in this section shall be construed to limit, alter or amend the CONTRACTOR's duty to indemnify under any other provisions of this Agreement.

15. Jurisdiction and Venue

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of the Imperial, State of California.

16. Integration

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both parties or an amendment to this Agreement agreed to both Parties. All prior negotiations and agreements are merged into this Agreement.

17. Counterparts

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

18. No Waiver

No failure of either the CITY or the CONTRACTOR to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

19. Severability

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, the parties hereto through their agent duly authorized, have executed this Agreement as of the day and year first above written.

ATTEST:

GABRIELA GARCIA
Deputy City Clerk of the City of Calexico

DAVID DALE
City Manager of the City of Calexico

CONTRACTOR

By: _____
Signature

Date

Printed Name and Title

Licensed in accordance with an act
Providing for the registration of contractors,
License No. _____

APPROVED AS TO FORM AND EXECUTION

CARLOS CAMPOS
City Attorney

Date

- I. General
- II. Nondiscrimination
- III. No segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government-wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

FHWA-1273 -- Revised May 1, 2012

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

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

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

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

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

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

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

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

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1321. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

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IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

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2. Withholding

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

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347Instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and

current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

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

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

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

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

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

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

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4. Apprentices and trainees**a. Apprentices (programs of the USDOL).**

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.**d. Apprentices and Trainees (programs of the U.S. DOT).**

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

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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- (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the

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

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

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

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

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

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

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

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

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

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

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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.

1. Instructions for Certification—First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered

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.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

- 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.
- 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

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(<https://www.epis.gov/>), which is compiled by the General Services Administration.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and normally possessed by a prudent person in the ordinary course of business dealings.

exceed information of participant is not required to exceed that which is \$100,000 and that all such recipients shall certify and disclose accordingly.