

# 240

**Letting June 17, 2022**

## **Notice to Bidders, Specifications and Proposal**



**Contract No. 99678  
PULASKI County  
Section 12-00071-00-BR  
Route FAS 937 (Tick Ridge Road)  
Project 1FDA-058 ()  
District 9 Construction Funds**

Prepared by

Checked by

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(Printed by authority of the State of Illinois)



- 1. TIME AND PLACE OF OPENING BIDS.** Electronic bids are to be submitted to the electronic bidding system (iCX-Integrated Contractors Exchange). All bids must be submitted to the iCX system prior to 12:00 p.m. June 17, 2022 at which time the bids will be publicly opened from the iCX SecureVault.
- 2. DESCRIPTION OF WORK.** The proposed improvement is identified and advertised for bids in the Invitation for Bids as:

**Contract No. 99678  
PULASKI County  
Section 12-00071-00-BR  
Project 1FDA-058 ()  
Route FAS 937 (Tick Ridge Road)  
District 9 Construction Funds**

**Replace the bridge carrying Tick Ridge Road over Post Creek Cut-off, 4 miles east of Grand Chain.**

- 3. INSTRUCTIONS TO BIDDERS.** (a) This Notice, the invitation for bids, proposal and letter of award shall, together with all other documents in accordance with Article 101.09 of the Standard Specifications for Road and Bridge Construction, become part of the contract. Bidders are cautioned to read and examine carefully all documents, to make all required inspections, and to inquire or seek explanation of the same prior to submission of a bid.  
  
(b) State law, and, if the work is to be paid wholly or in part with Federal-aid funds, Federal law requires the bidder to make various certifications as a part of the proposal and contract. By execution and submission of the proposal, the bidder makes the certification contained therein. A false or fraudulent certification shall, in addition to all other remedies provided by law, be a breach of contract and may result in termination of the contract.
- 4. AWARD CRITERIA AND REJECTION OF BIDS.** This contract will be awarded to the lowest responsive and responsible bidder considering conformity with the terms and conditions established by the Department in the rules, Invitation for Bids and contract documents. The issuance of plans and proposal forms for bidding based upon a prequalification rating shall not be the sole determinant of responsibility. The Department reserves the right to determine responsibility at the time of award, to reject any or all proposals, to re-advertise the proposed improvement, and to waive technicalities.

By Order of the  
Illinois Department of Transportation

Omer Osman,  
Secretary

INDEX  
FOR  
SUPPLEMENTAL SPECIFICATIONS  
AND RECURRING SPECIAL PROVISIONS

Adopted January 1, 2022

This index contains a listing of SUPPLEMENTAL SPECIFICATIONS, frequently used RECURRING SPECIAL PROVISIONS, and LOCAL ROADS AND STREETS RECURRING SPECIAL PROVISIONS.

No ERRATA this year.

SUPPLEMENTAL SPECIFICATIONS

Std. Spec. Sec.

Page No.

No Supplemental Specifications this year.

RECURRING SPECIAL PROVISIONS

The following RECURRING SPECIAL PROVISIONS indicated by an "X" are applicable to this contract and are included by reference:

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LOCAL ROADS AND STREETS RECURRING SPECIAL PROVISIONS

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## BDE SPECIAL PROVISIONS

The following special provisions indicated by an "X" are applicable to this contract. An \* indicates a new or revised special provision for the letting.

<u>File Name</u>	<u>Pg.</u>	<u>Special Provision Title</u>	<u>Effective</u>	<u>Revised</u>
80099		Accessible Pedestrian Signals (APS)	April 1, 2003	Jan. 1, 2022
* 80274		Aggregate Subgrade Improvement	April 1, 2012	April 1, 2022
80192		Automated Flagger Assistance Device	Jan. 1, 2008	
80173		Bituminous Materials Cost Adjustments	Nov. 2, 2006	Aug. 1, 2017
80246		Bituminous Surface Treatment with Fog Seal	Jan. 1, 2020	Jan. 1, 2022
80436	47	X Blended Finely Divided Minerals	April 1, 2021	
80241		Bridge Demolition Debris	July 1, 2009	
50261		Building Removal-Case I (Non-Friable and Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50481		Building Removal-Case II (Non-Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50491		Building Removal-Case III (Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50531		Building Removal-Case IV (No Asbestos)	Sept. 1, 1990	April 1, 2010
80384	48	X Compensable Delay Costs	June 2, 2017	April 1, 2019
80198		Completion Date (via calendar days)	April 1, 2008	
80199		Completion Date (via calendar days) Plus Working Days	April 1, 2008	
80293		Concrete Box Culverts with Skews > 30 Degrees and Design Fills ≤ 5 Feet	April 1, 2012	July 1, 2016
80311		Concrete End Sections for Pipe Culverts	Jan. 1, 2013	April 1, 2016
80261		Construction Air Quality – Diesel Retrofit	June 1, 2010	Nov. 1, 2014
80434		Corrugated Plastic Pipe (Culvert and Storm Sewer)	Jan. 1, 2021	
80029	52	X Disadvantaged Business Enterprise Participation	Sept. 1, 2000	Mar. 2, 2019
80229		Fuel Cost Adjustment	April 1, 2009	Aug. 1, 2017
80433		Green Preformed Thermoplastic Pavement Markings	Jan. 1, 2021	Jan. 1, 2022
80422		High Tension Cable Median Barrier	Jan. 1, 2020	Jan. 1, 2022
* 80443		High Tension Cable Median Barrier Removal	April 1, 2022	
* 80444		Hot-Mix Asphalt – Patching	April 1, 2022	
80442		Hot-Mix Asphalt – Start of Production	Jan. 1, 2022	
80438		Illinois Works Apprenticeship Initiative – State Funded Contracts	June 2, 2021	Sept. 2, 2021
80411		Luminaires, LED	April 1, 2019	Jan. 1, 2022
80045		Material Transfer Device	June 15, 1999	Jan. 1, 2022
80418		Mechanically Stabilized Earth Retaining Walls	Nov. 1, 2019	Nov. 1, 2020
80430	62	X Portland Cement Concrete – Haul Time	July 1, 2020	
34261		Railroad Protective Liability Insurance	Dec. 1, 1986	Jan. 1, 2022
80395		Sloped Metal End Section for Pipe Culverts	Jan. 1, 2018	
80340		Speed Display Trailer	April 2, 2014	Jan. 1, 2022
80127		Steel Cost Adjustment	April 2, 2014	Jan. 1, 2022
80397	63	X Subcontractor and DBE Payment Reporting	April 2, 2018	
80391	64	X Subcontractor Mobilization Payments	Nov. 2, 2017	April 1, 2019
80437		Submission of Payroll Records	April 1, 2021	
80435		Surface Testing of Pavements – IRI	Jan. 1, 2021	Jan. 1, 2022
80410		Traffic Spotters	Jan. 1, 2019	
20338	65	X Training Special Provisions	Oct. 15, 1975	Sept. 2, 2021
80318		Traversable Pipe Grate for Concrete End Sections	Jan. 1, 2013	Jan. 1, 2018
80429		Ultra-Thin Bonded Wearing Course	April 1, 2020	Jan. 1, 2022
80440		Waterproofing Membrane System	Nov. 1, 2021	
80302	68	X Weekly DBE Trucking Reports	June 2, 2012	Nov. 1, 2021
80427	69	X Work Zone Traffic Control Devices	Mar. 2, 2020	
80071	71	X Working Days	Jan. 1, 2002	

**GUIDE BRIDGE SPECIAL PROVISION INDEX/CHECK SHEET**

Effective as of the: January 21, 2022 Letting

<u>Pg #</u>	<u>√</u>	<u>File Name</u>	<u>Title</u>	<u>Effective</u>	<u>Revised</u>
		GBSP 4	Polymer Modified Portland Cement Mortar	June 7, 1994	April 1, 2016
		GBSP 13	High-Load Multi-Rotational Bearings	Oct 13, 1988	April 30, 2021
		GBSP 14	Jack and Remove Existing Bearings	April 20, 1994	April 13, 2018
		GBSP 15	Three Sided Precast Concrete Structure	July 12, 1994	Dec 21, 2016
		GBSP 16	Jacking Existing Superstructure	Jan 11, 1993	April 13, 2018
		GBSP 18	Modular Expansion Joint	May 19, 1994	Oct 23, 2020
		GBSP 21	Cleaning and Painting Contact Surface Areas of Existing Steel Structures	June 30, 2003	Oct 23, 2020
		GBSP 25	Cleaning and Painting Existing Steel Structures	Oct 2, 2001	Oct 23, 2020
		GBSP 26	Containment and Disposal of Lead Paint Cleaning Residues	Oct 2, 2001	Apr 22, 2016
		GBSP 28	Deck Slab Repair	May 15, 1995	April 13, 2018
		GBSP 29	Bridge Deck Microsilica Concrete Overlay	May 15, 1995	April 30, 2021
		GBSP 30	Bridge Deck Latex Concrete Overlay	May 15, 1995	April 30, 2021
		GBSP 31	Bridge Deck High-Reactivity Metakaolin (HRM) Conc Overlay	Jan 21, 2000	April 30, 2021
		GBSP 33	Pedestrian Truss Superstructure	Jan 13, 1998	Oct 23, 2020
72	X	GBSP 34	Concrete Wearing Surface	June 23, 1994	Oct 4, 2016
		GBSP 45	Bridge Deck Thin Polymer Overlay	May 7, 1997	Feb 6, 2013
		GBSP 53	Structural Repair of Concrete	Mar 15, 2006	Aug 9, 2019
		GBSP 55	Erection of Curved Steel Structures	June 1, 2007	
		GBSP 59	Diamond Grinding and Surface Testing Bridge Sections	Dec 6, 2004	April 30, 2021
		GBSP 60	Containment and Disposal of Non-Lead Paint Cleaning Residues	Nov 25, 2004	Apr 22, 2016
		GBSP 61	Slipform Parapet	June 1, 2007	March 1, 2019
		GBSP 67	Structural Assessment Reports for Contractor's Means and Methods	Mar 6, 2009	Oct 5, 2015
		GBSP 71	Aggregate Column Ground Improvement	Jan 15, 2009	Oct 15, 2011
		GBSP 72	Bridge Deck Fly Ash or GGBF Slag Concrete Overlay	Jan 18, 2011	April 30, 2021
74	X	GBSP 78	Bridge Deck Construction	Oct 22, 2013	Dec 21, 2016
		GBSP 79	Bridge Deck Grooving (Longitudinal)	Dec 29, 2014	Mar 29, 2017
		GBSP 81	Membrane Waterproofing for Buried Structures	Oct 4, 2016	March 1, 2019
		GBSP 82	Metallizing of Structural Steel	Oct 4, 2016	Oct 20, 2017
		GBSP 83	Hot Dip Galvanizing for Structural Steel	Oct 4, 2016	Oct 20, 2017
		GBSP 85	Micropiles	Apr 19, 1996	Oct 23, 2020
76	X	GBSP 86	Drilled Shafts	Oct 5, 2015	Oct 4, 2016
		GBSP 87	Lightweight Cellular Concrete Fill	Nov 11, 2011	Apr 1, 2016
		GBSP 88	Corrugated Structural Plate Structures	Apr 22, 2016	April 13, 2018
		GBSP 89	Preformed Pavement Joint Seal	Oct 4, 2016	Oct 23, 2020
		GBSP 90	Three Sided Precast Concrete Structure (Special)	Dec 21, 2016	April 13, 2018
		GBSP 91	Crosshole Sonic Logging Testing of Drilled Shafts	Apr 20, 2016	Aug 9, 2019
		GBSP 92	Thermal Integrity Profile Testing of Drilled Shafts	Apr 20, 2016	
		GBSP 93	Preformed Bridge Joint Seal	Dec 21, 2016	Oct 23, 2020
		GBSP 94	Warranty for Cleaning and Painting Steel Structures	Mar 3, 2000	Nov 24, 2004
		GBSP 96	Erection of Bridge Girders Over or Adjacent to Railroads	Aug 9, 2019	

LIST ANY ADDITIONAL SPECIAL PROVISIONS BELOW




STATE OF ILLINOIS  
SPECIAL PROVISIONS

The following Special Provisions supplement the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2022, the latest edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways", the "Manual of Test Procedures for Materials" in effect on the date of invitation for bids and the "Supplemental Specifications and Recurring Special Provisions" indicated on the Check Sheet included herein which apply to and govern the construction of FAS 937, Section 12-00071-00-BR, in Pulaski County, and in case of conflict with any part or parts of said Specifications, the said Special Provisions shall take precedence and shall govern.

**DESCRIPTION:**

This project is located on FAS 937 (CH 2/Tick Ridge Road) at its crossing of Post Creek Cut-Off approximately 4.0 miles east of Grand Chain, Illinois. The work involves the construction of a new multi-span structure and approach roadway profile grade raise and transitions on the existing horizontal alignment.

The proposed multi-span superstructure consists of 54" precast prestressed concrete I-beam bridge with concrete parapets. The structure measures 274'-0" back-to-back of abutments with a clear roadway width of 28'-0" at 0° skew. The proposed substructure consists of spill through integral abutments on driven steel H-piles and three-column piers on drilled shaft foundation with transfer beam.

The new bridge will be constructed on a raised grade to provide improved drainage over the bridge, approximately a 2'-9"± raise at the new bridge abutments.

The intent of the Plans is to salvage as much slopewall as possible. However, the Contractor may remove and replace the slopewall in-kind beyond the limits shown for required access as part of their means and methods; costs shall be included in the associated work, without a change in quantities.

The work under this Project includes approximately 626 lineal feet of approach roadway work on CH 2 (Tick Ridge Road). The total length of this Project is 900 lineal feet of which 900 feet will be improved.

**TRAFFIC CONTROL PLAN:**

Traffic control shall be in accordance with the applicable sections of the Standard Specifications for Road and Bridge Construction, the applicable guidelines contained in the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways, these special provisions and any special details and Highway Standards contained herein and in the plans.

At the pre-construction meeting, the Contractor shall furnish the name of the individual in his direct employ who is to be responsible for the installation and maintenance of the traffic control for this project. If the actual installation and maintenance are to be accomplished by a subcontractor, consent shall be requested of the Engineer at the time of the pre-construction meeting in accordance with Article 108.01 of the Standard Specifications for Road and Bridge Construction. This shall not relieve the Contractor of the foregoing requirement for a responsible individual in his direct employ. The County will provide the Contractor the name of its representative who will be responsible for the administration of the Traffic Control Plan.

Special attention is called to Articles 107.09 and 107.14 and applicable portions of Section 701 of the Standard Specifications for Road and Bridge Construction and the following:

- a. Standards 701901, BLR 21 and BLR 22, and the Detour Map and Traffic Control Plans included or referenced in the Plans.
- b. Traffic Controls

The east and west approaches along CH 2 (Tick Ridge Road) shall be barricaded and closed to all thru traffic at the ends of the project and the first roads east and west of the project, Ducks Lane and Easter Road, respectively, for the duration of the project.

Field and private entrances shall remain accessible throughout the time of construction.

Residents and the Engineer must be notified 1 week prior to any closures.

The Contractor shall erect signing as shown on the Detour Map of the Plans.

Post mounted road closure signs (W20-3(O)-48) with flashing amber lights and orange flags shall be furnished and erected in advance of the barricades as applicable.

All Road Construction Ahead and Road Closed Ahead signs shall have flashing amber lights and orange flags.

The Contractor shall be responsible for the maintenance of the barricades and signs during the life of the project. The Contractor shall ensure the continual visibility of these signs is maintained and not obstructed by vegetation or other obstacles.

Additional signing may be required by the Engineer if, in his opinion, public safety demands it. All signs, flags, lights, and barricades required shall be furnished, erected, maintained and removed by the Contractor.

Traffic Control related Special Provisions required for this project include:

- Traffic Control and Protection (Special)
- Staging Areas
- Vehicle and Equipment Warning Lights (BDE)
- Work Zone Traffic Control Surveillance (LRS 3)
- Construction and Maintenance Signs
- Work Zone Traffic Control Devices (BDE)
- Flaggers in Work Zones (LRS 4)

For stabilization, all Type III Barricades shall require a minimum of four sand bags per barricade.

The Engineer shall approve the exact locations of all proposed signs and barricades prior to installation. Installation shall be in accordance with Standard 701901.

All traffic control, including signs, barricades, flaggers, etc. shall be included and paid for at the contract unit price per Lump Sum for TRAFFIC CONTROL AND PROTECTION, (SPECIAL).

#### **TRAFFIC CONTROL AND PROTECTION, (SPECIAL):**

This work shall conform to the applicable portions of Section 701 of the Standards Specifications and the Traffic Control Plan included in the plans. This item of work shall consist of furnishing, installing, maintaining, relocating and removing all traffic control devices used for the purpose of regulating, warning or directing traffic during the construction of this project.

All traffic control devices used in this project shall conform to the plans, special provisions, traffic control standards and the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways. No modification of these requirements will be allowed without prior written approval of the Engineer.

Existing signs within the construction limits shall be removed and provided to the County for inclusion in their existing sign inventory.

Traffic control devices shall include all temporary traffic control and regulatory signs as described herein, and their supports, barricades with sand bags, plastic drums, channelizing devices, warning lights, arrow boards if necessary, flaggers, or any other device used for the purpose of regulating, warning or guiding traffic through the construction zone and guiding traffic around the construction.

The Contractor shall be responsible for the proper location, installations and arrangement of all traffic control devices as shown on the plans or as directed by the Engineer. The Contractor, when directed by the Engineer, shall remove all traffic control devices which were furnished, installed and maintained by him/her under this contract, and such devices shall remain in place until specific authorization for relocation or removal is received from the Engineer.

Prior to opening the road, permanent support posts, according to Article 730.02, shall be installed according to Article 730.04 and the details shown in the plans. Adequate fasteners (i.e. wood screws, nails, etc.) shall be used to construct the permanent supports and anchor the mailbox and/or non-mailbox container to the supports. The Engineer shall approve the construction of each support. Relocation and reinstallation of these items at the proper location shall not be paid for separately.

Traffic Control pay items will only be paid for in full if utilized to their full intent. If the Contractor elects to use traffic control procedures less than those specified, even if approved by the Engineer, deductions will be made.

All labor, equipment and materials required to complete this work shall be paid for at the contract unit price per LUMP SUM for TRAFFIC CONTROL AND PROTECTION, (SPECIAL).

**STAGING AREAS:**

This work shall be in accordance with Articles 107.20 & 402.10 of the Standard Specifications, the plans and as modified by this Special Provision.

The Contractor will need to construct and maintain a Temporary Construction Entrance at all staging area(s) to prevent sediment from leaving the site and shall be responsible for maintaining the temporary access to the satisfaction of the Engineer throughout the periods that it is in place. The Contractor shall furnish, haul, place, spread and compact said material in degraded areas at the discretion of the Engineer as many times as the Engineer requires throughout construction. The Contractor is not to reuse the material on-site, except for temporary access or as directed by the Engineer. All excess material shall be disposed of per the Standard Specifications.

This work will not be measured and paid for separately, but shall be included in the bid unit price per the LUMP SUM for TRAFFIC CONTROL AND PROTECTION, (SPECIAL).

**CONSTRUCTION AND MAINTENANCE SIGNS:**

This work shall be in accordance with Article 1091.03 & Article 1106.02 of the Standard Specifications, Highway Standard 701901, the plans and as modified herein.

All warning signs shall have minimum dimensions of 48"x48" with a black legend on a fluorescent orange reflectorized background which shall, at a minimum, meet Type AP reflectivity requirements outlined in Article 1091.03.

All construction signs mounted on permanent support for use in temporary traffic control having an area of 10 square feet or more shall be mounted on two 4" x 4" or two 4" x 6" wood posts.

Type A metal post (two for each sign) conforming to Article 1006.29 of the Standard Specifications may be used in lieu of wood posts. Type A metal posts used for these signs may be unfinished.

This work will not be measured and paid for separately, but shall be included in the cost of TRAFFIC CONTROL AND PROTECTION, (SPECIAL).

**COMPLIANCE WITH SECTION 404 PERMIT REQUIREMENTS:**

The Contractor shall conduct his operations in such a manner to comply with the provisions of PL 92-500, Section 404 requirements. The County has obtained a sign-off letter from the Corps of Engineers stating that this project is authorized under an existing nationwide permit, however, it is authorized only if all conditions of the sign-off letter are met. The CoE letter also lists requirements of the Illinois Environmental Protection Agency for this project. A copy of the CoE sign-off letter is attached to these Specifications for reference.

The Contractor shall comply with all conditions described in the above-mentioned sign-off letter.

No additional compensation will be allowed the Contractor for complying with requirements of this special provision.

**TEMPORARY LOW-WATER STREAM CROSSING:**

If the Contractor chooses to construct a temporary low-water stream crossing, it shall be constructed totally of clean coarse aggregate and in accordance with Recurring Special Provision 8. It is the responsibility of the Contractor to obtain Department of the Army permits and Section 401 Water Quality certification for any fill activity, including temporary construction fills, proposed by the Contractor and not included in this contract proposal.

The Contractor shall make every effort to keep the public from using the temporary low-water stream crossing. The Contractor shall also remove the temporary low-water stream crossing from the channel as directed by the Engineer.

The cost of the temporary low-water stream crossing, including any permits necessary, shall be the sole responsibility of the Contractor.

**CONSTRUCTION LAYOUT (SPECIAL)**

The Contractor shall furnish and place construction layout stakes for this project. The Department will provide adequate points along the proposed centerlines and control points (traverse stations and bench marks) as shown in the plans and listed herein. Any additional control points set by the Department will be identified in the field to the Contractor and all field notes will be kept by the Resident Engineer. In the event the Contractor removes, or damages necessary control points established by the Department, the Contractor shall reimburse the Department for re-staking.

The Contractor shall provide field forces, equipment and material to set all additional stakes for this project which are needed to establish offset stakes, reference points and any other horizontal or vertical controls, including supplementary bench marks, necessary to secure a correct layout of the work. The Contractor will not be required to set additional stakes to locate a utility line which is not included as a pay item in the contract nor to determine property lines between private properties.

The Contractor shall be responsible for having the finished work conform to the lines, grades, elevations and dimensions called for in the plans, and all work shall be performed according to normally accepted self-checking surveying practices. Any inspection or checking of the Contractor's layout by the Department and the acceptance of all or any part of it shall not relieve the Contractor of his/her responsibility to secure the proper dimensions, grades and elevations of the several parts of the work.

Responsibility of the Department

- (a) The Department will locate the proposed centerline of all roads and streets, but the centerline of private entrances will not be located or referenced by the Department. Locating the proposed roadway centerline will consist of establishing points such as PCs, PTs and POTs. Upon award of the project, the Contractor will be provided with alignment data printouts for their use.
- (b) Upon award of the project, control points already established near the project will be discussed with the Contractor, and a determination will be made if additional control points are necessary. These will then be field located by the Department for the Contractor.
- (c) Stakes set for (a) and (b) above will be identified in the field to the Contractor. Maintenance of the identified points shall be the Contractor's responsibility throughout the project.
- (d) The Department will make random checks of the Contractor's staking to determine if the work is in conformance with the plans.
- (e) Where the Contractor, in setting construction stakes, discovers discrepancies, the Department will check to determine their nature and make whatever revisions are necessary in the plans. Any additional restaking required by the Engineer will be the responsibility of the Contractor, however, the additional restaking done by the Contractor will be paid for according to Article 109.04 of the Standard Specifications.
- (f) The Department will accept responsibility for the accuracy of the initial control points as provided herein.
- (g) It is not the responsibility of the Department, except as provided herein, to check the correctness of the Contractor's stakes; any errors apparent will be immediately called to the Contractor's attention and s(he) shall make the necessary correction before the stakes are used for construction purposes.
- (h) Where the plan quantities for excavation are to be used as the final pay quantities, the Department will make sufficient checks to determine if the work has been completed in conformance with the plan cross sections.
- (i) The Department will locate the proposed Limits of Construction/Clearing by flagged stakes only. No permanent control points will be established for use by the Contractor for this operation.

Responsibility of the Contractor

- (a) The Contractor shall establish from the given control points all other control points necessary to construct the individual project elements. S(he) shall provide the Engineer adequate control in close proximity to each individual element to allow adequate checking of construction operations. This includes, but is not limited to, line and grade stakes, line and grade nails in form work, and/or filed or etched marks in substantially completed construction work. It is the Contractor's responsibility to tie in centerline control points in order to preserve them during construction operations.
- (b) At the completion of the grading operations, the Contractor shall set stakes at 50 ft Station intervals along each profile grade line. These stakes will be used for checks to determine if the earthwork operations have been completed in conformance with the plan cross sections.
- (c) Stakes for line and grade of pavement and/or curb shall be set at sufficient station intervals (not to exceed 50 ft) to assure substantial conformance to plan line and grade.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Lump Sum for CONSTRUCTION LAYOUT (SPECIAL).

**SHOP DRAWINGS:**

The Contractor shall submit shop drawings for review and approval on the following items:

- a. Precast Prestressed Concrete I-Beams.
- b. Precast Bridge Approach Slab
- c. Reinforcement Bars
- d. Reinforcement Bars, Epoxy Coated
- e. Drainage Scuppers

Shop Drawings shall be submitted to:

HMG Engineers, Inc.  
9360 Holy Cross Lane  
Breese, Illinois 62230

Attention: Mr. Bradley G. Hummert

All other material submittals/certifications shall be submitted to the Resident Engineer as stated in the Standard Specifications.

**UTILITIES:**

Approximate utility locations are shown on the plans. It is the CONTRACTOR'S RESPONSIBILITY to contact all utility companies, have them locate the depth of their facilities, make arrangements for adjustment, if necessary, and to carry on his/her operations accordingly.

The locations of existing underground utilities are shown in an approximate way only. The Contractor shall determine the exact location of existing facilities before commencing work and agrees to be fully responsible for any and all damages which may have been caused by his/her failure to locate and preserve any and all existing underground utilities.

**Call J.U.L.I.E. before beginning work 1-800-892-0123 (OR 811): (Design Locate # A1072716)**

<u>Name and Address of Utility</u>	<u>Type</u>	<u>Location</u>	<u>Estimated Date of Relocation</u>
Frontier Communications (South) (815) 895-1515	Communications	Entire Improvement	Before Construction
Fort Massac Water District (618) 543-7475	Water	Shown on the Plans	During Construction – locally shut down by Water District until new line is fully operational.
Southern Illinois Electric Co-op (618) 827-3555	Electric	Outside of Project Limits	N/A

The above represents the best information available and is only included for the convenience of the bidder. The applicable provisions of Articles 105.07, 107.20, and 107.37-107.40 and 109.02 of the Standard Specifications shall apply except as modified herein.

The Contractor shall contact the utility company at least two (2) weeks prior to starting construction so the company will be aware of the impending work.

If any utility adjustment or removal is required by the Contractor's operations (whether known or unknown), the Contractor shall coordinate with the Utility Company. The Contractor shall make initial utility adjustment/scheduling attempts before/during construction. If non-typical delays are encountered, the Contractor shall inform the Engineer in writing. The Engineer and the County will then contact the Utility Company to assist with the utility adjustment/scheduling. Request for an extension of time will be considered to the extent the Contractor's operations were affected.

Typical delays shall be anticipated for known utilities and included in the unit prices applying to this project.



**CLEARING AND GRUBBING:**

This work shall be in accordance with Section 201 of the Standard Specifications, the plans and as modified by this Special Provision.

The Contractor shall be responsible for removal of the tree debris and stumps within the construction limits created from the tree cutting operation performed prior to this contract for compliance with project commitments. Approximate locations and measurements are shown on the plans for information only and not for payment purposes.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Lump Sum for CLEARING AND GRUBBING.

**BEDDING, HAUNCHING AND INITIAL BACKFILL FOR DRAINAGE RELATED ITEMS:**

This work shall be in accordance with Section 208, Article 542.04 of the Standard Specifications, the plans and as modified by this Special Provision.

All trenches shall have bedding and haunching including entrance culverts and those beyond the two (2) foot distance from permanent surfaces (i.e., roadway, entrance, etc.). All bedding shall be placed in no greater than six (6) inch lifts. No bedding shall be placed over any standing or frozen water.

All aggregate materials used for bedding, haunching and initial backfill shall be of the same type described in TRENCH BACKFILL.

All labor, equipment, and materials required for this work shall not be paid for separately but shall be included in the unit price for PIPE CULVERTS of the class, type and diameter specified.

**PIPE CULVERTS and FLARED END SECTIONS:**

This work shall be in accordance with Section 542 of the Standard Specifications, the plans and as modified by this Special Provision.

For all Class A pipe culverts of the size and type specified, Article 542.03 shall be modified such that only reinforced concrete pipe with gasketed joints will be allowed.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Foot for PIPE CULVERTS of the class, type and size specified.

**TRENCH BACKFILL:**

This work shall be in accordance with Section 208 and Article 542.04(f) of the Standard Specifications, the Highway Standards, the plans and as modified by this Special Provision.

References to "Fine Aggregate" in Section 208 shall be removed. Coarse aggregate of the type described in Article 1004.05 (a) may be utilized. Article 1004.05 (b) requirements shall apply. Article 1004.05 (c) shall be revised such that only gradations CA 6 or CA 10 shall be utilized.

Frozen backfill material shall not be placed in any excavation, and no backfill shall be placed over any ponding or frozen water.

The aggregate used as Trench Backfill shall extend to the bottom of the proposed aggregate base course or the bottom of the proposed aggregate surface course unless otherwise stated in the plans.

Measurement for payment shall be per Article 208.03.

All labor, equipment and materials required to complete this work shall be paid for at the contract unit price per Cubic Yard for TRENCH BACKFILL.

**EARTHWORK and EMBANKMENT:**

This work shall be in accordance with applicable portions of Sections 202, 204, 205 and 211 of the Standard Specifications, the plans and as modified by this Special Provision.

During excavation, material shall be separated and classified as material suitable for embankment beneath the roadway, material suitable for embankment outside the roadway and topsoil material.

Erosion control items required for stockpiling (on-site and off-site) shall not be paid for separately as these needs will be dependent on the Contractor's operations.

Transporting stockpiled material from previous excavation operations to various locations on the job shall be done at no additional cost to the contract.

The plans contain a detail for benching of the existing embankment prior to the construction of the proposed embankment. This detail also requires the stripping of the topsoil material (5" minimum) to remove organic matter prior to constructing the benches to prevent its decay and ultimately causing a void in the proposed embankment.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per CUBIC YARD for EARTH EXCAVATION.

**SUBGRADE PREPARATION:**

This work shall be in accordance with Sections 202, 205, 301 and 351 of the Standard Specifications, the Highway Standards, the plans and as modified by this Special Provision.

Prior to the placement of the aggregate base course, the subgrade shall be proof rolled according to Article 351.10.

No additional compensation will be allowed for this work.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per Ton for AGGREGATE BASE COURSE, TYPE A.

**HEAVY DUTY EROSION CONTROL BLANKET:**

This work shall be in accordance with Section 251 of the Standard Specifications, the plans and as modified by this Special Provision.

To adhere to permit requirements set forth by IDNR, the erosion control blanket shall be removed once vegetation is established.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Square Yard for HEAVY DUTY EROSION CONTROL BLANKET.

**TRAFFIC BARRIER TERMINAL, TYPE 1 (SPECIAL):**

This work shall be performed according to applicable portions of Sections 630 & 631 of the Standard Specifications, Highway Standards 630001 & 630301, the plans and as modified by this Special Provision.

Due to the variations between manufacturers, the proposed guardrail (including terminals) shall extend to the locations contained in the schedules. Depending on the terminals chosen, this may require short runs of steel plate beam guardrail which shall be installed according to Highway Standard 630001, and no additional compensation shall be allowed due to the installation of the steel plate beam guardrail.

Measurement for payment shall be per Article 631.12.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per Each for TRAFFIC BARRIER TERMINAL TYPE 1 (SPECIAL) TANGENT.

**PAVEMENT CONNECTOR (PCC) FOR BRIDGE APPROACH SLAB:**

This work shall be in accordance with Section 420 of the Standard Specifications, Highway Standard 420401, the plans and as modified by this Special Provision.

The thickness shall vary from 0'-8" at the interface with the proposed hot-mix asphalt to 1'-4" at the interface with the proposed approach slab.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Square Yard for PAVEMENT CONNECTOR (PCC) FOR BRIDGE APPROACH SLAB.

**SIGN PANEL – TYPE 1:**

This work shall be in accordance with Section 720 of the Standard Specifications, the Highway Standards, the plans and as modified by this Special Provision.

All signs shall have supporting channels for bracing as specified in Article 720.04.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Square Foot for SIGN PANEL – TYPE 1.

**APPROACH SLAB REMOVAL:**

This work shall be in accordance with Section 440 of the Standard Specifications, the plans and as modified by this Special Provision.

The limits of the approach slab removal begin at the back of the existing abutments and end approximately 20'-0" behind the abutments. Any footings/appurtenances associated with the approach slab shall be included in the cost of removal and will not be paid for separately.

All labor, equipment, and materials required to complete this work shall be paid for at the contract unit price per Square Yard for APPROACH SLAB REMOVAL.

**DRILLED SHAFT TEST HOLES:**

This work shall be in accordance with Section 512 of the Standard Specifications, Drilled Shaft Special Provision, the plans and as modified herein.

Prior to the construction of the Drilled Shafts, the Contractor shall make, or cause to be made, subsurface borings to confirm rock elevation and rock quality at the locations specified by the Engineer. Test Holes should be at least 20' deep to confirm rock quality. Site conditions with the existing bridge in place made obtaining borings at the piers cost-prohibitive during the design phase.

Construction of the Drilled Shafts shall not proceed until the Bridge Engineer of Record has had at least one (1) week to confirm the adequacy of the shaft design. Any adjustments to plan elevations and quantities may be made at that time per the related unit prices.

No additional compensation will be allowed for this work.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per Each for DRILLED SHAFT TEST HOLES.

**PRECAST BRIDGE APPROACH SLAB:**

This work shall be in accordance with Section 504 of the Standard Specifications, the plans and as modified herein.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per Square Foot for PRECAST BRIDGE APPROACH SLAB.

**DRAINAGE SCUPPERS:**

This work shall be in accordance with Sections 503 and 1006 of the Standard Specifications, the plans and as modified herein.

All labor, equipment and materials required to complete this work shall be included in the contract unit price per Each for DRAINAGE SCUPPERS of the type specified.

**SAW CUTS:**

Saw cuts shall be made in the existing pavement as designated by the plans or as directed by the Engineer in order to obtain a straight, smooth and uniform joint for matching proposed improvements. All saw cuts shall be made to the depths specified in the plans or as directed by the Engineer. The Engineer will mark the locations of removals with paint and quantities will be measured to those points.

Should the Contractor fail to make the saw cuts prior to removal or otherwise extend removal beyond the marked saw cuts, a new saw cut shall be marked and additional removal and replacement quantities shall be made at the expense of the Contractor. The same shall also hold true when a good sawed edge is destroyed by subsequent vehicular traffic or careless use of construction equipment.

Saw cuts shall be included in the contract unit price per unit for the applicable pay item, and no additional compensation will be allowed.

**FINAL SHAPING:**

The Contractor shall grade all disturbed areas to drain, as directed by the Engineer. All earth surfaces shall be left free of debris and be suitable to accept seeding. Final shaping will not be paid for separately, but shall be considered included in the cost of the various pay items in the Contract and no additional compensation will be allowed.

Fort Massac Water District  
Post Creek Cutoff Watermain

# **Specifications**

Clarida & Ziegler Engineering  
410 N Court St  
Marion, IL 62959  
Job #: 20031  
10/21/2021

## Ductile Iron Watermain 8”

This bid item shall include all material, fittings, equipment and labor necessary to furnish and install the eight (8) inch Ductile Iron Pipe watermain with at the locations shown on the project plans and as directed by the engineer.

Ductile Iron water mains shall be constructed in accordance with Section 41 of the Illinois Standard Specifications for water and sewer latest edition. Water mains shall be pressure tested in accordance with Section 41-2.13 of the Illinois Standard Specifications for water and sewer latest edition. A 12 gauge copper tracer wire shall be buried along all water mains. Tracer wires shall be stubbed into the valve boxes and water meter vaults for access.

Water main pipe of the specified inside diameter shall meet the requirements of AWWA Standard C151. Pipe shall have bell & spigot joints with rubber gaskets meeting AWWA Standard C111. Pipe shall be TR Flex restrained joint pipe as manufactured by US Pipe. Water Main Pipe shall be pressure class 350 with a minimum wall thickness of 0.25”.

The Ductile Iron Pipe shall have standard asphaltic coating on the exterior. Pipe shall also have a cement-mortar lining on the interior in accordance with ANSI/AWWA C104/A21.4 of the latest revision.

The Ductile Iron Pipe shall have an exact dimension of 19.5’ each stick.

All fittings shall be mechanical joint ductile iron per ASTM A536 with stainless steel bolts and nuts. All fittings shall be long body and comply with ANSI/AWWA C110/A21.10. Fitting interior shall be cement mortar lined ANSI/AWWA C104/A21.4. Fitting shall be asphaltic coated exterior in accordance with ANSI/AWWA C104/A21.4. Fittings shall be of domestic manufacture. Transition mechanical joint gasket shall be in accordance of ANSI/AWWA C111/A21.11 Imported fittings will be rejected. All fittings and transition couplings needed for this project shall be considered incidental to the price of this pay item.

Pipe supports shall be 177 Adjustable Pipe Roll Support (with Resilient Coating) as manufactured by Anvil International. Pipe supports shall be sized for 10” DI/CI pipe size to accommodate the pipe, insulation and aluminum jacket and shall be installed and spaced accordingly. Pipe supports shall be installed 2 feet behind the bell of each stick of pipe along the bridge. Pipe supports shall be placed such that the watermain is installed parallel to the bridge deck in a straight line. Pipe shall be installed straight with no horizontal or vertical bends. All vertical and lateral bridge supports for this pipe shall be considered incidental to the pipe installed.

### Incidental Items (Locator Wire & Reclamation):

#### Locator Wire:

This item shall include all material, equipment and labor necessary to furnish and install a 12 gauge AWG high strength copper-clad steel conductor locator wire with 30 mil HDPE insulation with the proposed watermain and all service line locations. **Locator wire used for open cut installations shall have a minimum break load of 380#. Locator wire used for directional boring, bores and highway crossings shall have a minimum break load of 1150#.** The locator wire shall be continuous throughout the entire length of the proposed watermain. Splices shall be made with Copperhead



“Snake Bite” Direct Bury Lug, Part #SCB-01SR, Multi Wire Splice, or Part #3WB-01, Multi Wire Service Connection. The locator wire shall be brought up into **all** watermain valve boxes, hydrant auxiliary valve boxes and water meter boxes as shown on the project plans and as directed by the engineer. The contractor shall test the locator wire for continuity the entire length of the proposed watermain utilizing a method approved by the engineer. All sections which fail the continuity test shall be repaired and retested. **Locator Wire shall be Blue in color. No other color will be accepted for this project.**

Payment:

Payment for this bid item shall be made at the contract unit price per lineal foot for eight (8) inch Ductile Iron Watermain 8” of the length as measured along the centerline of pipe in place as installed.

## **Water Main Insulation**

This pay item shall include all material, fittings, equipment and labor necessary to install a 2” thick Fiberglass insulation and a 0.016 embossed aluminum jacket secured with stainless steel screws around the new 8” ductile iron watermain pipe. Insulation shall enclose all watermain pipe residing above the ground line.

Payment for this bid item shall be at the contract unit price per lineal foot for Water Main Insulation of the length measured along the centerline of pipe in place as installed.



**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE  
CORPS OF ENGINEERS  
REGULATORY DIVISION, SOUTH BRANCH  
6855 STATE ROAD 66  
NEWBURGH, INDIANA 47630  
April 26, 2021

Regulatory Division  
South Branch  
ID No. LRL-2021-182-tmb

Mr. Brad Watson  
Pulaski County Highway Department  
P.O. BOX 97  
Vila Ridge, IL 62996

Dear Mr. Watson:

This is in response to a Department of the Army permit application, received in this office February 22, 2021, requesting authorization to remove an existing three span steel beam/concrete deck bridge and replace it with a three span 54" beam concrete deck bridge with concrete column piers. All permanent impacts would occur above the ordinary high-water mark; however, temporary impacts would occur for stream crossings. The project is specifically located at 37.2403° N latitude and -88.9593° W longitude in Pulaski County, Illinois. The information supplied by you was reviewed to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act.

Your project is considered a discharge of backfill or bedding material for a road crossing. The project is authorized under the provisions of 33 CFR 330 Nationwide Permit (NWP) No. 14, Linear Transportation Projects, as published in the Federal Register January 6, 2017. Under the provisions of this authorization you must comply with the following:

1. Terms for Nationwide Permit No. 14
2. Nationwide Permit General Conditions
3. Water quality certification conditions issued by the Illinois Environmental Protection Agency published December 11, 2020

Special Conditions:

1. The Permittee shall implement all necessary precautions and measures so that any activity will not kill, injure, capture, harass, or otherwise harm any protected federally listed species. If the Permittee discovers or observes an injured/dead listed endangered or threatened species while accomplishing the authorized work, the Permittee shall immediately notify USACE to initiate the required Federal coordination. Tree clearing shall occur during the unoccupied time frame

September 30 – April 1 of any given year for the Indiana bat, Gray bat and/or Northern long-eared bat.

2. Within 30 days from the date of completing the authorized work, the permittee shall restore any temporary stream impacts to pre-existing contours and elevations. The affected areas shall be re-vegetated, as appropriate to minimize erosion and ensure site stability.

This verification is valid until March 18, 2022. The enclosed Compliance Certification must be submitted to the District Engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later. Note that we also perform periodic inspections to ensure compliance with our permit conditions and applicable Federal laws. A copy of this letter is being sent to your agent and to the ILEPA.

If you have any questions, please contact this office by writing to the above address, ATTN: CELRL-RD-S, calling 812-853-9713, or by email [tre.m.barron@usace.army.mil](mailto:tre.m.barron@usace.army.mil). All correspondence pertaining to this matter should refer to our ID No. LRL-2021-182-tmb.

Sincerely



Tré M. Barron  
Environmental Protection Specialist  
Regulatory Division

Enclosures

Barron/RD-S/nwp14IL.doc

ADDRESS FOR COORDINATING AGENCY

Illinois EPA, Permits Section  
P.O. BOX 19276  
Springfield, IL 62794-9276

Mr. Larry Gowler  
HMG Engineers, Inc.  
9360 Holy Cross Lane  
Breese, IL 62230

**Compliance Certification:**

**Permit Number: LRL-2021-182-tmb**

**Name of Permittee: Mr. Brad Watson, Pulaski County Engineers**

**Date of Issuance: April 26, 2021**

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
CELRL-RD-S-TMB  
6855 State Road 66  
Newburgh, IN 47630

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

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# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

**December 11, 2020**

U.S. Army Corps of Engineers, Rock Island  
ATTN: Ms. Samantha Chavez, Regulatory Branch  
Post Office Box 2004  
Clock Tower Building  
Rock Island, IL 61204-2004

Re: Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify  
Nationwide Permits, September 15, 2020  
CWA §401 Certification/Denial and applicable conditions  
Illinois EPA Log no. C-0210-20

Dear Ms. Chavez:

On September 15, 2020 the Corps of Engineers issued the notice of proposed rulemaking concerning their determination to reissue and modify the current Nationwide Permits (NWP) that are set to expire on March 18, 2022. By letter dated October 13, 2020 your office officially requested CWA §401 certification for those nationwide permits applicable in Illinois and further described in the Federal Register. By this final determination document the Illinois EPA grants §401 water quality certification for forty (40) nationwide permits with the special and/or general conditions specified below. This document also provides notice of the Agency determination to deny six (6) of the proposed nationwide permits which are provided below with reasons in accordance with 40 CFR 121.7(e)(2).

**CWA §401 certification is hereby granted, subject to General Conditions 1 through 12 below, for the following nationwide permits:**

NWP 3 – Maintenance.  
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Device and Activities  
NWP 5 – Scientific Measurement Devices  
NWP 7 – Outfall Structures and Associated Intake Structures  
NWP 18 – Minor Discharges  
NWP 19 – Minor Dredging  
NWP 20 – Response Operations for Oil or Hazardous Substances  
NWP 22 – Removal of Vessels  
NWP 25 – Structural Discharges  
NWP 30 – Moist Soil Management for Wildlife  
NWP 31 – Maintenance of Existing Flood Control Facilities  
NWP 33 – Temporary Construction, Access and Dewatering  
NWP 36 – Boat Ramps  
NWP 41 – Reshaping Existing Drainage Ditches  
NWP 45 – Repair of Uplands Damaged by Discrete Events  
NWP 46 – Discharges into Ditches

**CWA §401 certification is hereby granted, subject to General Conditions 1 through 12 below and the Special Conditions which are contained in the referenced attachment for the following identified nationwide permits:**

NWP 6 – Survey Activities. Refer to Special Conditions for NWP 6 in Attachment.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800  
2009 Mall Street Collinsville, IL 62234 (618) 346-5120  
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000  
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200  
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022  
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

- NWP 12 – Oil or Natural Gas Pipeline Activities. Refer to Special Conditions for NWP 12 in Attachment.
- NWP 13 – Bank Stabilization. Refer to Special Conditions for NWP 13 in Attachment.
- NWP 14 – Linear Transportation Projects. Refer to Special Conditions for NWP 14 in Attachment.
- NWP 15 – U.S. Coast Guard Approved Bridges. Refer to Special Conditions for NWP 15 in Attachment.
- NWP 16 – Return Water from Upland Contained Disposal Areas. Refer to Special Conditions for NWP 16 in Attachment.
- NWP 17 – Hydropower Projects. Refer to Special Conditions for NWP 17 in Attachment.
- NWP 23 – Approved Categorical Exclusions. Refer to Special Conditions for NWP 23 in Attachment.
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Refer to Special Conditions for NWP 27 in Attachment.
- NWP 29 – Residential Developments. Refer to Special Conditions for NWP 29 in Attachment.
- NWP 32 – Completed Enforcement Actions. Refer to Special Conditions for NWP 32 in Attachment.
- NWP 37 – Emergency Watershed Protection and Rehabilitation. Refer to Special Conditions for NWP 37 in Attachment.
- NWP 38 – Cleanup of Hazardous and Toxic Waste. Refer to Special Conditions for NWP 38 in Attachment.
- NWP 39 – Commercial and Institutional Developments. Refer to Special Conditions for NWP 39 in Attachment.
- NWP 40 – Agricultural Activities. Refer to Special Conditions for NWP 40 in Attachment.
- NWP 42 – Recreational Facilities. Refer to Special Conditions for NWP 42 in Attachment.
- NWP 43 – Stormwater Management Facilities. Refer to Special Conditions for NWP 43 in Attachment.
- NWP 51 – Land-Based Renewable Energy Generation Facilities. Refer to Special Conditions for NWP 51 in Attachment.
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects. Refer to Special Conditions for NWP 52 in Attachment.
- NWP 53 – Removal of Low-Head Dams. Refer to Special Conditions for NWP 53 in Attachment.
- NWP 54 – Living Shorelines. Refer to Special Conditions for NWP 54 in Attachment.
- NWP C – Electric Utility Line and Telecommunications Activities. Refer to Special Conditions for NWP 12 in Attachment.
- NWP D – Utility Line Activities for Water and Other Substances. Refer to Special Conditions for NWP 12 in Attachment.

**CWA §401 certification is hereby denied with reasons provided in accordance with 401 CFR 121.7 for the following NWPs:**

- NWP 21 – Surface Coal Mining Activities. The Illinois EPA has determined that a case-specific review is warranted for all surface mining activities including carbon extraction because pursuant to 35 Ill. Admin. Code Section 401.102, mining activities are identified as having, when certain refuse materials are used, the capability to cause or threaten to cause a nuisance or render waters harmful or detrimental to public health and to all legitimate uses including but not limited to livestock and wildlife uses. The likelihood that contaminants related to coal extraction, particularly acid producing minerals in mine refuse, would be found within overburden and soil stockpiles and therefore present within fill materials warrant a facility specific antidegradation assessment pursuant to 35 Ill. Admin. Code Section 302.105. Additionally, Illinois' Section 401 implementation rules at 35 Ill. Admin. Code Part 395 regarding material testing exemptions specifically exclude material with known sources of pollution. Therefore, Section 401 certification is denied for this nationwide permit (NWP21).
- NWP 34 – Cranberry Production Activities. The Illinois EPA has determined that the area of impact that is allowed by an authorization under this nationwide permit exceeds 1/2 acre. 1/2 acre is determined to be representative of the maximum threshold for minimal degradation of existing uses of aquatic resources. Consequently, any activity authorized under this nationwide permit

must be subject to a case-specific antidegradation assessment pursuant to 35 Ill. Admin. Code Section 302.105. Therefore the Illinois EPA denies 401 certification for NWP 34.

NWP 44 – Mining Activities: The Illinois EPA has determined that a case-specific review is warranted for all surface mining activities because pursuant to 35 Ill. Admin. Code Section 401.102, mining activities are identified as having, when certain refuse materials are used, the capability to cause or threaten to cause a nuisance or render waters harmful or detrimental to public health and to all legitimate uses including but not limited to livestock and wildlife uses. Furthermore, all mining activities are regulated by the Illinois EPA under federal and state statute because of their potential to cause or threaten to cause water pollution. Therefore, for the above reasons, the Illinois EPA denies 401 certification for NWP 44.

NWP 48 – Commercial Shellfish Mariculture Activities: As proposed, the Illinois EPA believes this nationwide permit is inapplicable to waters of the U.S. that are found within the State of Illinois. Therefore, the Illinois EPA denies 401 certification for NWP 48.

NWP 49 – Coal Remining Activities: By reference to the certification denial explanation for NWP 21, the Illinois EPA denies 401 certification for NWP 49.

NWP 50 – Underground Coal Mining: By reference to the certification denial explanation for NWP 21, the Illinois EPA denies 401 certification for NWP 50.

NWP E – Water Reclamation and Reuse Facilities: As proposed in the Federal Register, this proposed nationwide permit would appear to allow utilization of existing natural waterbodies as treatment devices. According to 35 Ill. Admin. Code 301.440 such utilization is not permissible. Therefore, the Illinois EPA denies 401 certification for NWP E.

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#### 401 Certification General Conditions

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General Conditions 1 through 12 shall be applicable to all NWPs that are granted 401 certification.

##### **General Condition 1: Waterbodies that Require Individual Certification**

Pursuant to 35 Ill. Adm. Code Section 302.105(d)(6), an individual 401 water quality certification will be required for activities permitted under these Nationwide Permits for discharges to waters designated by the State of Illinois as waters of particular biological significance or Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b). Biologically Significant Streams (BSS) are cataloged in Illinois DNR's publication "Integrating Multiple Taxa in a Biological Stream Rating System" and may be identified at: <https://www2.illinois.gov/dnr/conservation/BiologicalStreamratings/Pages/default.aspx>.

##### **General Condition 2: Water Quality Impairments**

Pursuant to 35 Ill. Adm. Code Section 302.105(a), 302.105(c)(2)(B) and 395.401(a), an individual 401 water quality certification will be required for activities permitted under these Nationwide Permits that may cause a discharge that, whether temporarily or permanently, may cause or contribute to additional loading of any pollutant, or deterioration of any water quality parameter, such as pH or dissolved oxygen, where such pollutant or parameter is also designated by the State of Illinois as a cause of water quality impairment of the particular segment of the receiving water body according to the Illinois Environmental Protection Agency's Section 303(d) list. The most recent Illinois Integrated Water Quality Report and



Section 303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>.

**General Condition 3: Threatened and Endangered Species**

Pursuant to 35 Ill. Admin. Code Section 302.105(f)(1)(F), prior to proceeding with any work in furtherance of activities permitted under these Nationwide Permits, potential impacts to State threatened or endangered species and Natural Areas shall be determined in accordance with applicable consultation procedures established under 17 Ill. Admin Code Part 1075. The Department of Natural Resources (IDNR) Ecological Compliance Assessment Tool (EcoCAT) is available to complete consultation at <http://dnr.illinois.gov/EcoPublic/>. If IDNR determines that adverse impacts to protected natural resources are likely, the applicant shall address those identified concerns with IDNR through the consultation process. Please contact IDNR, Impact Assessment Section at 217-785-5500 if you have any questions regarding consultation.

**General Condition 4: TMDLs**

Pursuant to 35 Ill. Admin. Code Section 302.105(a), 302.105(c)(2)(B) and 395.401(a), activities permitted under these Nationwide Permits that may cause a discharge that, whether temporarily or permanently, may cause or contribute to additional loading of any pollutant, or deterioration of any water quality parameter, such as pH or dissolved oxygen, where such pollutant or parameter is addressed by a USEPA approved Total Maximum Daily Load (TMDL) report for the receiving water body shall develop and implement additional measures and or procedures which ensure consistency with the load allocations, assumptions and requirements of the TMDL report. TMDL program information and water listings are available at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/reports.aspx>.

**General Condition 5: Prohibitions**

Pursuant to 35 Ill. Admin. Code Section 395.401(a), the applicant shall not cause:

- violation of applicable provisions of the Illinois Environmental Protection Act;
- water pollution defined and prohibited by the Illinois Environmental Protection Act;
- violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
- interference with water use practices near public recreation areas or water supply intakes.

**General Condition 6: Erosion and Sedimentation Control Measures**

Pursuant to the Illinois Environmental Protection Act Section 39(a)[415 ILCS 5/39(a)] and 35 Ill. Admin. Code Sections 302.203 and 395.402(b)(2), the applicant shall implement all necessary sedimentation and erosion control measures consistent with the current edition of the "Illinois Urban Manual" found at <https://illinoisurbanmanual.org/>. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins, silt fencing and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. All areas affected by construction shall be seeded and stabilized as soon after construction as possible.

**General Condition 7: NPDES Stormwater Construction Permit**

Pursuant to the Illinois Environmental Protection Act Section 39(a)[415 ILCS 5/39(a)] and 35 Ill. Admin. Code Section 395.402(b)(2), the applicant shall be responsible for obtaining an NPDES Storm Water Permit required by the federal Clean Water Act prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be

applied for at <https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/construction.aspx>.

**General Condition 8: Spill Response Plan**

Pursuant to 35 Ill. Admin. Code Sections 395.401, 302.203 and 302.208, the applicant shall ensure that a spill avoidance and response plan has been developed and implemented for management of accidental releases of petroleum, oil, and lubricant products to the aquatic environment during construction and for emergency notification of applicable downstream water supply operators. Absorbent pads, containment booms and skimmers shall be available to facilitate the cleanup of petroleum spills. If floating hydrocarbon (oil and gas) products are observed, the applicant or his designated individual will be responsible for directing that work be halted so that appropriate corrective measures are taken in accordance with the plan prior to resuming work.

**General Condition 9: Hydraulic Machinery**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.304, and 302.515, all hydraulic machinery utilized for the permitted activity and used in or immediately adjacent to waters of the State shall utilize biodegradable or bio-based hydraulic fluids to minimize pollution in the case of broken or leaking hydraulic equipment.

**General Condition 10: Temporary Structures and Work**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.204, and 395.401(b), temporary work pads, cofferdams, access roads and other temporary fills are approved provided that such activities are constructed with clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities. Temporary fills within streams, creeks or rivers shall utilize adequate bypass measures (i.e. dam and pump, flumes, culverts, etc.) to minimize sedimentation and erosion and to maintain normal stream flow during construction.

**General Condition 11: Construction Site Dewatering**

Dewatering of a construction site is authorized provided the dewatering activity is limited to the immediate work area within a cofferdam or otherwise isolated from waters of the State, and the work site is free from sources of contamination including those of natural origin. Dewatering activities shall incorporate Best Management Practices in accordance with the current edition of the "Illinois Urban Manual" <https://illinoisurbanmanual.org/> Practice Standard for Dewatering (no. 813) or as otherwise appropriate to ensure that return flows from the dewatering activity are free of unnatural turbidity and floating debris and meet applicable water quality standards. Dewatering or discharge of flush water from construction of drilled piers or boreholes is not authorized and must be conducted in accordance with an NPDES permit issued by the Illinois EPA.

**General Condition 12: Discharged Material Quality**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.208 and 395.401(b), any spoil material excavated, dredged or otherwise produced must not be returned to the water body but must be deposited in a self-contained area in compliance with all state statutes. Except as specifically allowed by special condition, any backfilling must be done with clean material that is predominantly sand or larger size material, with no more than 20% passing a #230 U. S. sieve and placed in a manner to prevent violation of applicable water quality standards.

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### 401 Certification Special Conditions

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Special Conditions including the conditional exclusions of 401 certification coverage that are listed within the Attachment: “Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits” shall be applicable as stated therein.

Should you have any questions or comments regarding the content of this nationwide certification, please contact Darren Gove at 217-782-3362.

Sincerely,

### **ORIGINAL SIGNED**

Darin E. LeCrone, P.E.  
Manager, Permit Section  
Division of Water Pollution Control

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Attachment: Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits Regarding Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify Nationwide Permits dated September 15, 2020

cc:     Records Unit  
          CoE, Chicago District  
          CoE, Louisville District (Indianapolis Office)  
          CoE, Louisville District (Newburgh Regulatory Office)  
          CoE, Memphis District  
          CoE, St. Louis District  
          IDNR, Bartlett  
          IDNR, OWR, Chicago  
          IDNR, OWR, Springfield  
          USEPA, Region 5  
          USFWS, Rock Island, Barrington and Marion

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 6  
Survey Activities**

1. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(iii), 302.203, and 395.401(a), the applicant for the applicable nationwide permit shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
  - a. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;
  - b. Sidecast material is not placed within ponds or other water bodies other than wetlands; and
  - c. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site or used as backfill (refer to Condition 4).
3. Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.205, and 395.401(a), backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean coarse aggregate, gravel or other material which will not cause siltation. Excavated material may be used only if:
  - a. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
  - b. Excavation and backfilling are done under dry conditions.
4. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), and 395.401(a), backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMITS 12, C, and D.  
Utility Line Activities, Electric, Water, and Others.**

1. Pursuant to 35 Ill. Adm. Code Sections 302.105(c)(2)(B), 302.208, 395.401, case-specific (individual) 401 water quality certification from the Illinois EPA will be required for:
  - a. activities in the following waters:
    - i. Lake Calumet
    - ii. Fox River (including the Fox Chain of Lakes)
    - iii. Lake Michigan
    - iv. Chicago Sanitary and Ship Canal
    - v. Calumet-Sag Channel
    - vi. Little Calumet River
    - vii. Grand Calumet River
    - viii. Calumet River
    - ix. Pettibone Creek (in Lake County)

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 13  
Bank Stabilization**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for bank stabilization activities that will exceed 1000 linear feet.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), asphalt, bituminous material and concrete with protruding material such as reinforcing bars or mesh shall not be:
  - a. used for backfill;
  - b. placed on shorelines/streambanks; or
  - c. placed in waters of the State.
3. Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.208, and 395.401(b), the applicant shall consider installing bioengineering practices in lieu of structural practices of bank stabilization to minimize impacts to the lake, pond, river or stream and enhance aquatic habitat. The applicant shall document the selection process for the bank stabilization technique(s) and the basis for the selection of the bank stabilization practices. Bioengineering techniques may include, but are not limited to:
  - a. adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above;
  - b. vegetated geogrids;
  - c. coconut fiber (coir) logs;
  - d. live, woody vegetative cuttings, fascines or stumps;
  - e. brush layering; and
  - f. soil lifts.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 14  
Linear Transportation Projects**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities that cause loss of greater than 500 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities covered by this nationwide permit that include the temporary or permanent placement of steel or other painted structures within the waterbody as result of demolition work of previous structures.
3. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for new or expanded roadways that affect waterways which are designated by the State of Illinois as having water quality impairments caused by chloride. The most recent Illinois Integrated Water Quality Report and Section 303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdl/Pages/303d-list.aspx>

4. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 15  
U.S. Coast Guard Approved Bridges**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities covered by this nationwide permit that include the temporary or permanent placement of steel or other painted structures within the waterbody as result of demolition work of previous structures.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for new bridges (not replacing another) that affect waterways which are designated by the State of Illinois as having water quality impairments caused by chloride. The most recent Illinois Integrated Water Quality Report and Section 303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 16  
Return Water from Upland Contained Disposal Areas**

1. Pursuant to the Illinois Environmental Protection Act Section 12(a) [415 ILCS 5/12(a)] and 35 Ill. Admin. Code Section 395.402(b)(2), applicants shall obtain a pollution control facility permit subject to 35 Ill. Admin. Code Subtitle C Part 309 Subpart B for construction and operation of the upland contained disposal area.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 17  
Hydropower Projects**

1. Pursuant to 35 Ill. Admin. Code Sections 395.401(b), an individual Section 401 water quality certification will be required for any project that is not previously approved by a Section 401 water quality certification issued by the Illinois EPA for a Federal Energy Regulatory Commission license or permit.

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# 2017 Nationwide Permit Summary

U.S Army Corps  
Of Engineers  
Louisville District

Issued: March 19, 2017

Expires: March 18, 2022

## No. 14. Linear Transportation Projects

(NWP Final Notice, 82 FR, 1987)

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage

buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

**Note 2:** Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

**Note 3:** For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

## Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

### 1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the



necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose

of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official

study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

**17. Tribal Rights.** No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to

the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat

Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

#### **20. Historic Properties.**

(a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district

engineer with the appropriate documentation to demonstrate compliance with those requirements.

The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, or potentially eligible for listing on, the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)).

When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might

have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in

the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NHPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NHPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NHPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed  $\frac{1}{10}$ -acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of  $\frac{1}{10}$ -acre or less that require pre-construction notification, the district

engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.*, conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species.

The width of the required riparian area will address documented water quality or aquatic habitat loss concerns.

Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.*, riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NHPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-

lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of  $1/2$ -acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than  $1/2$ -acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation.

When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to

ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed  $1/3$ -acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

*"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."*

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification

document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**32. Pre-Construction Notification.**

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still

incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of

loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:*

(1) The district engineer will consider any comments from Federal and state agencies concerning the

proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat

conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (*i.e.*, NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by

the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.*, partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.*, watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (*e.g.*, streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP. Where the district engineer deems necessary, conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than

minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

#### **E. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or

proposed Federal project (see general condition 31).

#### **F. Definitions**

*Best management practices (BMPs):* Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

*Compensatory mitigation:* The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

*Currently serviceable:* Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

*Direct effects:* Effects that are caused by the activity and occur at the same time and place.

*Discharge:* The term "discharge" means any discharge of dredged or fill material into waters of the United States.

*Ecological reference:* A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

*Enhancement:* The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

*Ephemeral stream:* An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

*Establishment (creation):* The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results

in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry

land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity.

Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A

request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Protected tribal resources:** Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer



substrate characterize pools.

*Riparian areas:* Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

*Shellfish seeding:* The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (*i.e.*, spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

*Single and complete linear project:* A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (*i.e.*, a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

*Single and complete non-linear project:* For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

*Stormwater management:* Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use

on the aquatic environment.

*Stormwater management facilities:* Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

*Stream bed:* The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

*Stream channelization:* The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

*Structure:* An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

*Tidal wetland:* A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

*Tribal lands:* Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

*Tribal rights:* Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

*Vegetated shallows:* Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted

aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

*Waterbody:* For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

[FR Doc. 2016-31355 Filed 1-5-17; 8:45 am]

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State of Illinois  
Department of Transportation  
Bureau of Local Roads and Streets

SPECIAL PROVISION  
FOR  
INSURANCE

Effective: February 1, 2007  
Revised: August 1, 2007

All references to Sections or Articles in this specification shall be construed to mean specific Section or Article of the Standard Specifications for Road and Bridge Construction, adopted by the Department of Transportation.

The Contractor shall name the following entities as additional insured under the Contractor's general liability insurance policy in accordance with Article 107.27:

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The entities listed above and their officers, employees, and agents shall be indemnified and held harmless in accordance with Article 107.26.

State of Illinois  
DEPARTMENT OF TRANSPORTATION  
Bureau of Local Roads & Streets  
SPECIAL PROVISION  
FOR  
LOCAL QUALITY ASSURANCE/ QUALITY MANAGEMENT QC/QA  
Effective: January 1, 2022

Replace the first five paragraphs of Article 1030.06 of the Standard Specifications with the following:

**“1030.06 Quality Management Program.** The Quality Management Program (QMP) will be Quality Control / Quality Assurance (QC/QA) according to the following.”

Delete Article 1030.06(d)(1) of the Standard Specifications.

Revise Article 1030.09(g)(3) of the Standard Specifications to read:

“(3) If core testing is the density verification method, the Contractor shall provide personnel and equipment to collect density verification cores for the Engineer. Core locations will be determined by the Engineer following the document “Hot-Mix Asphalt QC/QA Procedure for Determining Random Density Locations” at density verification intervals defined in Article 1030.09(b). After the Engineer identifies a density verification location and prior to opening to traffic, the Contractor shall cut a 4 in. (100 mm) diameter core. With the approval of the Engineer, the cores may be cut at a later time.”

Revise Article 1030.09(h)(2) of the Standard Specifications to read:

“(2) After final rolling and prior to paving subsequent lifts, the Engineer will identify the random density verification test locations. Cores or nuclear density gauge testing will be used for density verification. The method used for density verification will be as selected below.

Density Verification Method	
<input type="checkbox"/>	Cores
<input checked="" type="checkbox"/>	Nuclear Density Gauge (Correlated when paving $\geq$ 3,000 tons per mixture)

Density verification test locations will be determined according to the document “Hot-Mix Asphalt QC/QA Procedure for Determining Random Density Locations”. The density testing interval for paving wider than or equal to 3 ft (1 m) will be 0.5 miles (800 m) for lift thicknesses of 3 in. (75 mm) or less and 0.2 miles (320 m) for lift thicknesses greater than 3 in. (75 mm). The density testing interval for paving less than 3 ft (1 m) wide will be 1 mile (1,600 m). If a day’s paving will be less than the prescribed density testing interval, the length of the day’s paving will be the interval for that day. The density testing interval for mixtures used for patching will be 50 patches with a minimum of one test per mixture per project.

If core testing is the density verification method, the Engineer will witness the Contractor coring, and secure and take possession of all density samples at the

density verification locations. The Engineer will test the cores collected by the Contractor for density according to Illinois Modified AASHTO T 166 or AASHTO T 275.

If nuclear density gauge testing is the density verification method, the Engineer will conduct nuclear density gauge tests. The Engineer will follow the density testing procedure detailed in the document "Illinois Modified ASTM D 2950, Standard Test Method for Density of Bituminous Concrete In-Place by Nuclear Method".

A density verification test will be the result of a single core or the average of the nuclear density tests at one location. The results of each density test must be within acceptable limits. The Engineer will promptly notify the Contractor of observed deficiencies."

Revise the seventh paragraph and all subsequent paragraphs in Section D. of the document "Hot-Mix Asphalt QC/QA Initial Daily Plant and Random Samples" to read:

"Mixtures shall be sampled from the truck at the plant by the Contractor following the same procedure used to collect QC mixture samples (Section A). This process will be witnessed by the Engineer who will take custody of the verification sample. Each sample bag with a verification mixture sample will be secured by the Engineer using a locking ID tag. Sample boxes containing the verification mixture sample will be sealed/taped by the Engineer using a security ID label."

## **IDOT TRAINING PROGRAM GRADUATE ON-THE-JOB TRAINING SPECIAL PROVISION**

Effective: August 1, 2012      Revised: February 2, 2017

In addition to the Contractor's equal employment opportunity (EEO) affirmative action efforts undertaken as required by this Contract, the Contractor is encouraged to participate in the incentive program described below to provide additional on-the-job training to certified graduates of the IDOT pre-apprenticeship training program, as outlined in this Special Provision.

IDOT funds, and various Illinois community colleges operate, pre-apprenticeship training programs throughout the State to provide training and skill-improvement opportunities to promote the increased employment of minority groups, disadvantaged persons and women in all aspects of the highway construction industry. The intent of this IDOT Pre-Apprenticeship Training Program Graduate (TPG) special provision (Special Provision) is to place these certified program graduates on the project site for this Contract in order to provide the graduates with meaningful on-the-job training. Pursuant to this Special Provision, the Contractor must make every reasonable effort to recruit and employ certified TPG trainees to the extent such individuals are available within a practicable distance of the project site.

Specifically, participation of the Contractor or its subcontractor in the Program entitles the participant to reimbursement for graduates' hourly wages at \$15.00 per hour per utilized TPG trainee, subject to the terms of this Special Provision. Reimbursement payment will be made even though the Contractor or subcontractor may also receive additional training program funds from other non-IDOT sources for other non-TPG trainees on the Contract, provided such other source does not specifically prohibit the Contractor or subcontractor from receiving reimbursement from another entity through another program, such as IDOT through the TPG program. With regard to any IDOT funded construction training program other than TPG, however, additional reimbursement for other IDOT programs will not be made beyond the TPG Program described in this Special Provision when the TPG Program is utilized.

No payment will be made to the Contractor if the Contractor or subcontractor fails to provide the required on-site training to TPG trainees, as solely determined by IDOT. A TPG trainee must begin training on the project as soon as the start of work that utilizes the relevant trade skill and the TPG trainee must remain on the project site through completion of the Contract, so long as training opportunities continue to exist in the relevant work classification. Should a TPG trainee's employment end in advance of the completion of the Contract, the Contractor must promptly notify the IDOT District EEO Officer for the Contract that the TPG's involvement in the Contract has ended. The Contractor must supply a written report for the reason the TPG trainee involvement terminated, the hours completed by the TPG trainee on the Contract, and the number of hours for which the incentive payment provided under this Special Provision will be, or has been claimed for the separated TPG trainee.

Finally, the Contractor must maintain all records it creates as a result of participation in the Program on the Contract, and furnish periodic written reports to the IDOT District EEO Officer that document its contractual performance under and compliance with this Special Provision. Finally, through participation in the Program and reimbursement of wages, the Contractor is not relieved of, and IDOT has not waived, the requirements of any federal or state labor or employment law applicable to TPG workers, including compliance with the Illinois Prevailing Wage Act.

**METHOD OF MEASUREMENT:** The unit of measurement is in hours.

BASIS OF PAYMENT: This work will be paid for at the contract unit price of \$15.00 per hour for each utilized certified TPG Program trainee (TRAINEES TRAINING PROGRAM GRADUATE). The estimated total number of hours, unit price, and total price must be included in the schedule of prices for the Contract submitted by Contractor prior to beginning work. The initial number of TPG trainees for which the incentive is available for this contract is 1.

The Department has contracted with several educational institutions to provide screening, tutoring and pre-training to individuals interested in working as a TPG trainee in various areas of common construction trade work. Only individuals who have successfully completed a Pre-Apprenticeship Training Program at these IDOT approved institutions are eligible to be TPG trainees. To obtain a list of institutions that can connect the Contractor with eligible TPG trainees, the Contractor may contact: HCCTP TPG Program Coordinator, Office of Business and Workforce Diversity (IDOT OBWD), Room 319, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, Illinois 62764. Prior to commencing construction with the utilization of a TPG trainee, the Contractor must submit documentation to the IDOT District EEO Officer for the Contract that provides the names and contact information of the TPG trainee(s) to be trained in each selected work classification, proof that that the TPG trainee(s) has successfully completed a Pre-Apprenticeship Training Program, proof that the TPG is in an Apprenticeship Training Program approved by the U.S. Department of Labor Bureau of Apprenticeship Training, and the start date for training in each of the applicable work classifications.

To receive payment, the Contractor must provide training opportunities aimed at developing a full journeyworker in the type of trade or job classification involved. During the course of performance of the Contract, the Contractor may seek approval from the IDOT District EEO Officer to employ additional eligible TPG trainees. In the event the Contractor subcontracts a portion of the contracted work, it must determine how many, if any, of the TPGs will be trained by the subcontractor. Though a subcontractor may conduct training, the Contractor retains the responsibility for meeting all requirements imposed by this Special Provision. The Contractor must also include this Special Provision in any subcontract where payment for contracted work performed by a TPG trainee will be passed on to a subcontractor.

Training through the Program is intended to move TPGs toward journeyman status, which is the primary objective of this Special Provision. Accordingly, the Contractor must make every effort to enroll TPG trainees by recruitment through the Program participant educational institutions to the extent eligible TPGs are available within a reasonable geographic area of the project. The Contractor is responsible for demonstrating, through documentation, the recruitment efforts it has undertaken prior to the determination by IDOT whether the Contractor is in compliance with this Special Provision, and therefore, entitled to the Training Program Graduate reimbursement of \$15.00 per hour.

Notwithstanding the on-the-job training requirement of this TPG Special Provision, some minimal off-site training is permissible as long as the offsite training is an integral part of the work of the contract, and does not compromise or conflict with the required on-site training that is central to the purpose of the Program. No individual may be employed as a TPG trainee in any work classification in which he/she has previously successfully completed a training program leading to journeyman status in any trade, or in which he/she has worked at a journeyman level or higher.

## **BLENDED FINELY DIVIDED MINERALS (BDE)**

Effective: April 1, 2021

Revise the second paragraph of Article 1010.01 of the Standard Specifications to read:

“Different sources or types of finely divided minerals shall not be mixed or used alternately in the same item of construction, except as a blended finely divided mineral product according to Article 1010.06.”

Add the following article to Section 1010 of the Standard Specifications:

**“1010.06 Blended Finely Divided Minerals.** Blended finely divided minerals shall be the product resulting from the blending or intergrinding of two or three finely divided minerals. Blended finely divided minerals shall be according to ASTM C 1697, except as follows.

- (a) Blending shall be accomplished by mechanically or pneumatically intermixing the constituent finely divided minerals into a uniform mixture that is then discharged into a silo for storage or tanker for transportation.
- (b) The blended finely divided mineral product will be classified according to its predominant constituent or the manufacturer’s designation and shall meet the chemical requirements of its classification. The other finely divided mineral constituent(s) will not be required to conform to their individual standards.”

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## COMPENSABLE DELAY COSTS (BDE)

Effective: June 2, 2017

Revised: April 1, 2019

Revise Article 107.40(b) of the Standard Specifications to read:

“(b) Compensation. Compensation will not be allowed for delays, inconveniences, or damages sustained by the Contractor from conflicts with facilities not meeting the above definition; or if a conflict with a utility in an unanticipated location does not cause a shutdown of the work or a documentable reduction in the rate of progress exceeding the limits set herein. The provisions of Article 104.03 notwithstanding, compensation for delays caused by a utility in an unanticipated location will be paid according to the provisions of this Article governing minor and major delays or reduced rate of production which are defined as follows.

- (1) Minor Delay. A minor delay occurs when the work in conflict with the utility in an unanticipated location is completely stopped for more than two hours, but not to exceed two weeks.
- (2) Major Delay. A major delay occurs when the work in conflict with the utility in an unanticipated location is completely stopped for more than two weeks.
- (3) Reduced Rate of Production Delay. A reduced rate of production delay occurs when the rate of production on the work in conflict with the utility in an unanticipated location decreases by more than 25 percent and lasts longer than seven calendar days.”

Revise Article 107.40(c) of the Standard Specifications to read:

“(c) Payment. Payment for Minor, Major, and Reduced Rate of Production Delays will be made as follows.

- (1) Minor Delay. Labor idled which cannot be used on other work will be paid for according to Article 109.04(b)(1) and (2) for the time between start of the delay and the minimum remaining hours in the work shift required by the prevailing practice in the area.

Equipment idled which cannot be used on other work, and which is authorized to standby on the project site by the Engineer, will be paid for according to Article 109.04(b)(4).

- (2) Major Delay. Labor will be the same as for a minor delay.

Equipment will be the same as for a minor delay, except Contractor-owned equipment will be limited to two weeks plus the cost of move-out to either the



Contractor's yard or another job and the cost to re-mobilize, whichever is less. Rental equipment may be paid for longer than two weeks provided the Contractor presents adequate support to the Department (including lease agreement) to show retaining equipment on the job is the most economical course to follow and in the public interest.

- (3) Reduced Rate of Production Delay. The Contractor will be compensated for the reduced productivity for labor and equipment time in excess of the 25 percent threshold for that portion of the delay in excess of seven calendar days. Determination of compensation will be in accordance with Article 104.02, except labor and material additives will not be permitted.

Payment for escalated material costs, escalated labor costs, extended project overhead, and extended traffic control will be determined according to Article 109.13.”

Revise Article 108.04(b) of the Standard Specifications to read:

“(b) No working day will be charged under the following conditions.

- (1) When adverse weather prevents work on the controlling item.
- (2) When job conditions due to recent weather prevent work on the controlling item.
- (3) When conduct or lack of conduct by the Department or its consultants, representatives, officers, agents, or employees; delay by the Department in making the site available; or delay in furnishing any items required to be furnished to the Contractor by the Department prevents work on the controlling item.
- (4) When delays caused by utility or railroad adjustments prevent work on the controlling item.
- (5) When strikes, lock-outs, extraordinary delays in transportation, or inability to procure critical materials prevent work on the controlling item, as long as these delays are not due to any fault of the Contractor.
- (6) When any condition over which the Contractor has no control prevents work on the controlling item.”

Revise Article 109.09(f) of the Standard Specifications to read:

“(f) Basis of Payment. After resolution of a claim in favor of the Contractor, any adjustment in time required for the work will be made according to Section 108. Any adjustment in the costs to be paid will be made for direct labor, direct materials, direct equipment, direct jobsite overhead, direct offsite overhead, and other direct costs allowed by the resolution. Adjustments in costs will not be made for interest charges, loss of anticipated profit, undocumented loss of efficiency, home office overhead and unabsorbed overhead

other than as allowed by Article 109.13, lost opportunity, preparation of claim expenses and other consequential indirect costs regardless of method of calculation.

The above Basis of Payment is an essential element of the contract and the claim cost recovery of the Contractor shall be so limited.”

Add the following to Section 109 of the Standard Specifications.

**“109.13 Payment for Contract Delay.** Compensation for escalated material costs, escalated labor costs, extended project overhead, and extended traffic control will be allowed when such costs result from a delay meeting the criteria in the following table.

Contract Type	Cause of Delay	Length of Delay
Working Days	Article 108.04(b)(3) or Article 108.04(b)(4)	No working days have been charged for two consecutive weeks.
Completion Date	Article 108.08(b)(1) or Article 108.08(b)(7)	The Contractor has been granted a minimum two week extension of contract time, according to Article 108.08.

Payment for each of the various costs will be according to the following.

- (a) Escalated Material and/or Labor Costs. When the delay causes work, which would have otherwise been completed, to be done after material and/or labor costs have increased, such increases will be paid. Payment for escalated material costs will be limited to the increased costs substantiated by documentation furnished by the Contractor. Payment for escalated labor costs will be limited to those items in Article 109.04(b)(1) and (2), except the 35 percent and 10 percent additives will not be permitted.
- (b) Extended Project Overhead. For the duration of the delay, payment for extended project overhead will be paid as follows.
  - (1) Direct Jobsite and Offsite Overhead. Payment for documented direct jobsite overhead and documented direct offsite overhead, including onsite supervisory and administrative personnel, will be allowed according to the following table.

Original Contract Amount	Supervisory and Administrative Personnel
Up to \$5,000,000	One Project Superintendent
Over \$ 5,000,000 - up to \$25,000,000	One Project Manager, One Project Superintendent or Engineer, and One Clerk
Over \$25,000,000 - up to \$50,000,000	One Project Manager, One Project Superintendent, One Engineer, and

	One Clerk
Over \$50,000,000	One Project Manager, Two Project Superintendents, One Engineer, and One Clerk

(2) Home Office and Unabsorbed Overhead. Payment for home office and unabsorbed overhead will be calculated as 8 percent of the total delay cost.

(c) Extended Traffic Control. Traffic control required for an extended period of time due to the delay will be paid for according to Article 109.04.

When an extended traffic control adjustment is paid under this provision, an adjusted unit price as provided for in Article 701.20(a) for increase or decrease in the value of work by more than ten percent will not be paid.

Upon payment for a contract delay under this provision, the Contractor shall assign subrogation rights to the Department for the Department's efforts of recovery from any other party for monies paid by the Department as a result of any claim under this provision. The Contractor shall fully cooperate with the Department in its efforts to recover from another party any money paid to the Contractor for delay damages under this provision."

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## **DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (BDE)**

Effective: September 1, 2000

Revised: March 2, 2019

**FEDERAL OBLIGATION.** The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 CFR Part 26 apply to this contract concerning the utilization of disadvantaged business enterprises. For the purposes of this Special Provision, a disadvantaged business enterprise (DBE) means a business certified by the Department in accordance with the requirements of 49 CFR Part 26 and listed in the Illinois Unified Certification Program (IL UCP) DBE Directory.

**STATE OBLIGATION.** This Special Provision will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. When this Special Provision is used to satisfy state law requirements on 100 percent state-funded contracts, the federal government has no involvement in such contracts (not a federal-aid contract) and no responsibility to oversee the implementation of this Special Provision by the Department on those contracts. DBE participation on 100 percent state-funded contracts will not be credited toward fulfilling the Department's annual overall DBE goal required by the US Department of Transportation to comply with the federal DBE program requirements.

**CONTRACTOR ASSURANCE.** The Contractor makes the following assurance and agrees to include the assurance in each subcontract the Contractor signs with a subcontractor.

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

- (a) Withholding progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the Contractor from future bidding as non-responsible.

**OVERALL GOAL SET FOR THE DEPARTMENT.** As a requirement of compliance with 49 CFR Part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal applies to all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a

good faith effort to achieve the overall goal. The dollar amount paid to all approved DBE companies performing work called for in this contract is eligible to be credited toward fulfillment of the Department's overall goal.

CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR. This contract includes a specific DBE utilization goal established by the Department. The goal has been included because the Department has determined the work of this contract has subcontracting opportunities that may be suitable for performance by DBE companies. The determination is based on an assessment of the type of work, the location of the work, and the availability of DBE companies to do a part of the work. The assessment indicates, in the absence of unlawful discrimination and in an arena of fair and open competition, DBE companies can be expected to perform 12.00 % of the work. This percentage is set as the DBE participation goal for this contract. Consequently, in addition to the other award criteria established for this contract, the Department will only award this contract to a bidder who makes a good faith effort to meet this goal of DBE participation in the performance of the work. A bidder makes a good faith effort for award consideration if either of the following is done in accordance with the procedures set for in this Special Provision:

- (a) The bidder documents enough DBE participation has been obtained to meet the goal or,
- (b) The bidder documents a good faith effort has been made to meet the goal, even though the effort did not succeed in obtaining enough DBE participation to meet the goal.

DBE LOCATOR REFERENCES. Bidders shall consult the IL UCP DBE Directory as a reference source for DBE-certified companies. In addition, the Department maintains a letting and item specific DBE locator information system whereby DBE companies can register their interest in providing quotes on particular bid items advertised for letting. Information concerning DBE companies willing to quote work for particular contracts may be obtained by contacting the Department's Bureau of Small Business Enterprises at telephone number (217) 785-4611, or by visiting the Department's website at:

<http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index>.

BIDDING PROCEDURES. Compliance with this Special Provision is a material bidding requirement and failure of the bidder to comply will render the bid not responsive.

The bidder shall submit a DBE Utilization Plan (form SBE 2026), and a DBE Participation Statement (form SBE 2025) for each DBE company proposed for the performance of work to achieve the contract goal, with the bid. If the Utilization Plan indicates the contract goal will not be met, documentation of good faith efforts shall also be submitted. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor is selected over a DBE for work on the contract. The required forms and documentation must be submitted as a single .pdf file using the "Integrated Contractor Exchange (iCX)" application within the Department's "EBids System".

The Department will not accept a Utilization Plan if it does not meet the bidding procedures set forth herein and the bid will be declared not responsive. In the event the bid is declared not responsive, the Department may elect to cause the forfeiture of the penal sum of the bidder's proposal guaranty and may deny authorization to bid the project if re-advertised for bids.

GOOD FAITH EFFORT PROCEDURES. The contract will not be awarded until the Utilization Plan is approved. All information submitted by the bidder must be complete, accurate and adequately document enough DBE participation has been obtained or document the good faith efforts of the bidder, in the event enough DBE participation has not been obtained, before the Department will commit to the performance of the contract by the bidder. The Utilization Plan will be approved by the Department if the Utilization Plan documents sufficient commercially useful DBE work to meet the contract goal or the bidder submits sufficient documentation of a good faith effort to meet the contract goal pursuant to 49 CFR Part 26, Appendix A. This means the bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. The Department will consider the quality, quantity, and intensity of the kinds of efforts the bidder has made. Mere *pro forma* efforts, in other words efforts done as a matter of form, are not good faith efforts; rather, the bidder is expected to have taken genuine efforts that would be reasonably expected of a bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

- (a) The following is a list of types of action that the Department will consider as part of the evaluation of the bidder's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases and will be considered by the Department.
  - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBE companies that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE companies to respond to the solicitation. The bidder must determine with certainty if the DBE companies are interested by taking appropriate steps to follow up initial solicitations.
  - (2) Selecting portions of the work to be performed by DBE companies in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
  - (3) Providing interested DBE companies with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- (4) a. Negotiating in good faith with interested DBE companies. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE companies that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE companies to perform the work.
  - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE companies is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBE companies if the price difference is excessive or unreasonable. In accordance with the above Bidding Procedures, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (5) Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
  - (6) Making efforts to assist interested DBE companies in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
  - (7) Making efforts to assist interested DBE companies in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE companies.
- (b) If the Department determines the bidder has made a good faith effort to secure the work commitment of DBE companies to meet the contract goal, the Department will award the contract provided it is otherwise eligible for award. If the Department determines the

bidder has failed to meet the requirements of this Special Provision or that a good faith effort has not been made, the Department will notify the responsible company official designated in the Utilization Plan that the bid is not responsive. The notification will also include a statement of reasons for the adverse determination. If the Utilization Plan is not approved because it is deficient as a technical matter, unless waived by the Department, the bidder will be notified and will be allowed no more than a five calendar day period to cure the deficiency.

- (c) The bidder may request administrative reconsideration of an adverse determination by emailing the Department at "[DOT.DBE.UP@illinois.gov](mailto:DOT.DBE.UP@illinois.gov)" within the five calendar days after the receipt of the notification of the determination. The determination shall become final if a request is not made on or before the fifth calendar day. A request may provide additional written documentation or argument concerning the issues raised in the determination statement of reasons, provided the documentation and arguments address efforts made prior to submitting the bid. The request will be reviewed by the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person to consider all issues of documentation and whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten working days after receipt of the request for reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid not responsive.

**CALCULATING DBE PARTICIPATION.** The Utilization Plan values represent work anticipated to be performed and paid for upon satisfactory completion. The Department is only able to count toward the achievement of the overall goal and the contract goal the value of payments made for the work actually performed by DBE companies. In addition, a DBE must perform a commercially useful function on the contract to be counted. A commercially useful function is generally performed when the DBE is responsible for the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The Department and Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

- (a) DBE as the Contractor: 100 percent goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE does not count toward the DBE goals.
- (b) DBE as a joint venture Contractor: 100 percent goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.



- (c) DBE as a subcontractor: 100 percent goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the Contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE does not count toward the DBE goal.
- (d) DBE as a trucker: 100 percent goal credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed, and insured by the DBE must be used on the contract. Credit will be given for the following:
  - (1) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (2) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
- (e) DBE as a material supplier:
  - (1) 60 percent goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
  - (2) 100 percent goal credit for the cost of materials or supplies obtained from a DBE manufacturer.
  - (3) 100 percent credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a DBE regular dealer or DBE manufacturer.

**CONTRACT COMPLIANCE.** Compliance with this Special Provision is an essential part of the contract. The Department is prohibited by federal regulations from crediting the participation of a DBE included in the Utilization Plan toward either the contract goal or the Department's overall goal until the amount to be applied toward the goals has been paid to the DBE. The following administrative procedures and remedies govern the compliance by the Contractor with the contractual obligations established by the Utilization Plan. After approval of the Utilization Plan and award of the contract, the Utilization Plan and individual DBE Participation Statements become part of the contract. If the Contractor did not succeed in obtaining enough DBE participation to achieve the advertised contract goal, and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of DBE work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the amended contract goal. All work indicated for performance by an approved DBE shall be performed, managed, and supervised by the DBE executing the DBE Participation Commitment Statement.

- (a) NO AMENDMENT. No amendment to the Utilization Plan may be made without prior written approval from the Department's Bureau of Small Business Enterprises. All requests for amendment to the Utilization Plan shall be emailed to the Department at [DOT.DBE.UP@illinois.gov](mailto:DOT.DBE.UP@illinois.gov).
- (b) CHANGES TO WORK. Any deviation from the DBE condition-of-award or contract plans, specifications, or special provisions must be approved, in writing, by the Department as provided elsewhere in the Contract. The Contractor shall notify affected DBEs in writing of any changes in the scope of work which result in a reduction in the dollar amount condition-of-award to the contract. Where the revision includes work committed to a new DBE subcontractor, not previously involved in the project, then a Request for Approval of Subcontractor, Department form BC 260A or AER 260A, must be signed and submitted. If the commitment of work is in the form of additional tasks assigned to an existing subcontract, a new Request for Approval of Subcontractor will not be required. However, the Contractor must document efforts to assure the existing DBE subcontractor is capable of performing the additional work and has agreed in writing to the change.
- (c) SUBCONTRACT. The Contractor must provide copies of DBE subcontracts to the Department upon request. Subcontractors shall ensure that all lower tier subcontracts or agreements with DBEs to supply labor or materials be performed in accordance with this Special Provision.
- (d) ALTERNATIVE WORK METHODS. In addition to the above requirements for reductions in the condition of award, additional requirements apply to the two cases of Contractor-initiated work substitution proposals. Where the contract allows alternate work methods which serve to delete or create underruns in condition of award DBE work, and the Contractor selects that alternate method or, where the Contractor proposes a substitute work method or material that serves to diminish or delete work committed to a DBE and replace it with other work, then the Contractor must demonstrate one of the following:
- (1) The replacement work will be performed by the same DBE (as long as the DBE is certified in the respective item of work) in a modification of the condition of award; or
  - (2) The DBE is aware its work will be deleted or will experience underruns and has agreed in writing to the change. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so; or
  - (3) The DBE is not capable of performing the replacement work or has declined to perform the work at a reasonable competitive price. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so.

- (e) TERMINATION AND REPLACEMENT PROCEDURES. The Contractor shall not terminate or replace a DBE listed on the approved Utilization Plan, or perform with other forces work designated for a listed DBE except as provided in this Special Provision. The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains the Department's written consent as provided in subsection (a) of this part. Unless Department consent is provided for termination of a DBE subcontractor, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBE in the Utilization Plan.

As stated above, the Contractor shall not terminate or replace a DBE subcontractor listed in the approved Utilization Plan without prior written consent. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Written consent will be granted only if the Bureau of Small Business Enterprises agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate or replace the DBE firm. Before transmitting to the Bureau of Small Business Enterprises any request to terminate and/or substitute a DBE subcontractor, the Contractor shall give notice in writing to the DBE subcontractor, with a copy to the Bureau, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor shall give the DBE five days to respond to the Contractor's notice. The DBE so notified shall advise the Bureau and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Bureau should not approve the Contractor's action. If required in a particular case as a matter of public necessity, the Bureau may provide a response period shorter than five days.

For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law.

- (6) The Contractor has determined the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the projects and provides written notice to the Contractor of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the contract;
- (10) Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

When a DBE is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make a good faith effort to find another DBE to substitute for the original DBE to perform at least the same amount of work under the contract as the terminated DBE to the extent needed to meet the established Contract goal. The good faith efforts shall be documented by the Contractor. If the Department requests documentation under this provision, the Contractor shall submit the documentation within seven days, which may be extended for an additional seven days if necessary at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

- (f) FINAL PAYMENT. After the performance of the final item of work or delivery of material by a DBE and final payment therefore to the DBE by the Contractor, but not later than 30 calendar days after payment has been made by the Department to the Contractor for such work or material, the Contractor shall submit a DBE Payment Agreement on Department form SBE 2115 to the Resident Engineer. If full and final payment has not been made to the DBE, the DBE Payment Agreement shall indicate whether a disagreement as to the payment required exists between the Contractor and the DBE or if the Contractor believes the work has not been satisfactorily completed. If the Contractor does not have the full amount of work indicated in the Utilization Plan performed by the DBE companies indicated in the Utilization Plan and after good faith efforts are reviewed, the Department may deduct from contract payments to the Contractor the amount of the goal not achieved as liquidated and ascertained damages. The Contractor may request an administrative reconsideration of any amount deducted as damages pursuant to subsection (h) of this part.
- (g) ENFORCEMENT. The Department reserves the right to withhold payment to the Contractor to enforce the provisions of this Special Provision. Final payment shall not be

made on the contract until such time as the Contractor submits sufficient documentation demonstrating achievement of the goal in accordance with this Special Provision or after liquidated damages have been determined and collected.

- (h) RECONSIDERATION. Notwithstanding any other provision of the contract, including but not limited to Article 109.09 of the Standard Specifications, the Contractor may request administrative reconsideration of a decision to deduct the amount of the goal not achieved as liquidated damages. A request to reconsider shall be delivered to the Contract Compliance Section and shall be handled and considered in the same manner as set forth in paragraph (c) of “Good Faith Effort Procedures” of this Special Provision, except a final decision that a good faith effort was not made during contract performance to achieve the goal agreed to in the Utilization Plan shall be the final administrative decision of the Department. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

80029

## PORTLAND CEMENT CONCRETE – HAUL TIME (BDE)

Effective: July 1, 2020

Revise Article 1020.11(a)(7) of the Standard Specifications to read:

“(7) Haul Time. Haul time shall begin when the delivery ticket is stamped. The delivery ticket shall be stamped no later than five minutes after the addition of the mixing water to the cement, or after the addition of the cement to the aggregate when the combined aggregates contain free moisture in excess of two percent by weight (mass). If more than one batch is required for charging a truck using a stationary mixer, the time of haul shall start with mixing of the first batch. Haul time shall end when the truck is emptied for incorporation of the concrete into the work. The maximum haul time shall be as follows.

Concrete Temperature at Point of Discharge, °F (°C)	Maximum Haul Time <sup>1/</sup> (minutes)	
	Truck Mixer or Truck Agitator	Nonagitator Truck
50 - 64 (10 - 17.5)	90	45
> 64 (> 17.5) - without retarder	60	30
> 64 (> 17.5) - with retarder	90	45

1/ To encourage start-up testing for mix adjustments at the plant, the first two trucks will be allowed an additional 15 minutes haul time whenever such testing is performed.

For a mixture which is not mixed on the jobsite, a delivery ticket shall be required for each load. The following information shall be recorded on each delivery ticket: (1) ticket number; (2) name of producer and plant location; (3) contract number; (4) name of Contractor; (5) stamped date and time batched; (6) truck number; (7) quantity batched; (8) amount of admixture(s) in the batch; (9) amount of water in the batch; and (10) Department mix design number.

For concrete mixed in jobsite stationary mixers, the above delivery ticket may be waived, but a method of verifying the haul time shall be established to the satisfaction of the Engineer.”

80430

## **SUBCONTRACTOR AND DBE PAYMENT REPORTING (BDE)**

Effective: April 2, 2018

Add the following to Section 109 of the Standard Specifications.

**“109.14 Subcontractor and Disadvantaged Business Enterprise Payment Reporting.**  
The Contractor shall report all payments made to the following parties:

- (a) first tier subcontractors;
- (b) lower tier subcontractors affecting disadvantaged business enterprise (DBE) goal credit;
- (c) material suppliers or trucking firms that are part of the Contractor’s submitted DBE utilization plan.

The report shall be made through the Department’s on-line subcontractor payment reporting system within 21 days of making the payment.”

80397

## **SUBCONTRACTOR MOBILIZATION PAYMENTS (BDE)**

Effective: November 2, 2017

Revised: April 1, 2019

Replace the second paragraph of Article 109.12 of the Standard Specifications with the following:

“This mobilization payment shall be made at least seven days prior to the subcontractor starting work. The amount paid shall be at the following percentage of the amount of the subcontract reported on form BC 260A submitted for the approval of the subcontractor’s work.

Value of Subcontract Reported on Form BC 260A	Mobilization Percentage
Less than \$10,000	25%
\$10,000 to less than \$20,000	20%
\$20,000 to less than \$40,000	18%
\$40,000 to less than \$60,000	16%
\$60,000 to less than \$80,000	14%
\$80,000 to less than \$100,000	12%
\$100,000 to less than \$250,000	10%
\$250,000 to less than \$500,000	9%
\$500,000 to \$750,000	8%
Over \$750,000	7%”

80391



## **TRAINING SPECIAL PROVISIONS (BDE)**

Effective: October 15, 1975

Revised: September 2, 2021

This Training Special Provision supersedes Section 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," and is in implementation of 23 U.S.C. 140(a).

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training aimed at developing full journeyman in the type of trade or job classification involved. The number of trainees to be trained under this contract will be 1. In the event the Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also ensure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within the reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to the Illinois Department of Transportation for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee it employs on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g. by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps it has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journeyman status or in which he or she has been employed as a journeyman. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the Illinois Department of Transportation and the Federal Highway Administration. The Illinois Department of Transportation and the Federal Highway Administration shall approve a program, if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved by not necessarily sponsored by the U.S. Department of Labor Employment Training Administration shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Illinois Department of Transportation and the Federal Highway Administration. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training of persons in excess of the number specified herein. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirement of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program.

It is not required that all trainees be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The Contractor shall furnish the trainee a copy of the program he will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily complete.

The Contractor shall provide for the maintenance of records and furnish periodic reports documenting its performance under this Training Special Provision.

For contracts with an awarded contract value of \$500,000 or more, the Contractor is required to comply with the Illinois Works Apprenticeship Initiative (30 ILCS 559/20-20 to 20-25) and all applicable administrative rules to the extent permitted by Section 20-20(g). For federally funded projects, the number of trainees to be trained under this contract, as stated in the Training Special Provisions, will be the established goal for the Illinois Works Apprenticeship Initiative 30 ILCS 559/20-20(g). The Contractor shall make a good faith effort to meet this goal. For federally funded projects, the Illinois Works Apprenticeship Initiative will be implemented using the FHWA approved OJT procedures. The Contractor must comply with the recordkeeping and reporting obligations of the Illinois Works Apprenticeship Initiative for the life of the project, including the certification as to whether the trainee/apprentice labor hour goals were met.

Method of Measurement. The unit of measurement is in hours.

Basis of Payment. This work will be paid for at the contract unit price of 80 cents per hour for TRAINEES. The estimated total number of hours, unit price, and total price have been included in the schedule of prices.

20338

## **WEEKLY DBE TRUCKING REPORTS (BDE)**

Effective: June 2, 2012

Revised: November 1, 2021

The Contractor shall submit a weekly report of Disadvantaged Business Enterprise (DBE) trucks hired by the Contractor or subcontractors (i.e. not owned by the Contractor or subcontractors) that are used for DBE goal credit.

The report shall be submitted to the Engineer on Department form "SBE 723" within ten business days following the reporting period. The reporting period shall be Sunday through Saturday for each week reportable trucking activities occur.

Any costs associated with providing weekly DBE trucking reports shall be considered as included in the contract unit prices bid for the various items of work involved and no additional compensation will be allowed.

80302

## WORK ZONE TRAFFIC CONTROL DEVICES (BDE)

Effective: March 2, 2020

Add the following to Article 701.03 of the Standard Specifications:

“(q) Temporary Sign Supports ..... 1106.02”

Revise the third paragraph of Article 701.14 of the Standard Specifications to read:

“For temporary sign supports, the Contractor shall provide a FHWA eligibility letter for each device used on the contract. The letter shall provide information for the set-up and use of the device as well as a detailed drawing of the device. The signs shall be supported within 20 degrees of vertical. Weights used to stabilize signs shall be attached to the sign support per the manufacturer’s specifications.”

Revise the first paragraph of Article 701.15 of the Standard Specifications to read:

“**701.15 Traffic Control Devices.** For devices that must meet crashworthiness standards, the Contractor shall provide a manufacturer’s self-certification or a FHWA eligibility letter for each Category 1 device and a FHWA eligibility letter for each Category 2 and Category 3 device used on the contract. The self-certification or letter shall provide information for the set-up and use of the device as well as a detailed drawing of the device.”

Revise the first six paragraphs of Article 1106.02 of the Standard Specifications to read:

“**1106.02 Devices.** Work zone traffic control devices and combinations of devices shall meet crashworthiness standards for their respective categories. The categories are as follows.

Category 1 includes small, lightweight, channelizing and delineating devices that have been in common use for many years and are known to be crashworthy by crash testing of similar devices or years of demonstrable safe performance. These include cones, tubular markers, plastic drums, and delineators, with no attachments (e.g. lights). Category 1 devices manufactured after December 31, 2019 shall be MASH-16 compliant. Category 1 devices manufactured on or before December 31, 2019, and compliant with NCHRP 350 or MASH 2009, may be used on contracts let before December 31, 2024.

Category 2 includes devices that are not expected to produce significant vehicular velocity change but may otherwise be hazardous. These include vertical panels with lights, barricades, temporary sign supports, and Category 1 devices with attachments (e.g. drums with lights). Category 2 devices manufactured after December 31, 2019 shall be MASH-16 compliant. Category 2 devices manufactured on or before December 31, 2019, and compliant with NCHRP 350 or MASH 2009, may be used on contracts let before December 31, 2024.

Category 3 includes devices that are expected to cause significant velocity changes or other potentially harmful reactions to impacting vehicles. These include crash cushions (impact

attenuators), truck mounted attenuators, and other devices not meeting the definitions of Category 1 or 2. Category 3 devices manufactured after December 31, 2019 shall be MASH-16 compliant. Category 3 devices manufactured on or before December 31, 2019, and compliant with NCHRP 350 or MASH 2009, may be used on contracts let before December 31, 2029. Category 3 devices shall be crash tested for Test Level 3 or the test level specified.

Category 4 includes portable or trailer-mounted devices such as arrow boards, changeable message signs, temporary traffic signals, and area lighting supports. It is preferable for Category 4 devices manufactured after December 31, 2019 to be MASH-16 compliant; however, there are currently no crash tested devices in this category, so it remains exempt from the NCHRP 350 or MASH compliance requirement.

For each type of device, when no more than one MASH-16 compliant is available, an NCHRP 350 or MASH-2009 compliant device may be used, even if manufactured after December 31, 2019.”

Revise Articles 1106.02(g), 1106.02(k), and 1106.02(l) to read:

“(g) Truck Mounted/Trailer Mounted Attenuators. The attenuator shall be approved for use at Test Level 3. Test Level 2 may be used for normal posted speeds less than or equal to 45 mph.

(k) Temporary Water Filled Barrier. The water filled barrier shall be a lightweight plastic shell designed to accept water ballast and be on the Department’s qualified product list.

Shop drawings shall be furnished by the manufacturer and shall indicate the deflection of the barrier as determined by acceptance testing; the configuration of the barrier in that test; and the vehicle weight, velocity, and angle of impact of the deflection test. The Engineer shall be provided one copy of the shop drawings.

(l) Movable Traffic Barrier. The movable traffic barrier shall be on the Department’s qualified product list.

Shop drawings shall be furnished by the manufacturer and shall indicate the deflection of the barrier as determined by acceptance testing; the configuration of the barrier in that test; and the vehicle weight, velocity, and angle of impact of the deflection test. The Engineer shall be provided one copy of the shop drawings. The barrier shall be capable of being moved on and off the roadway on a daily basis.”

80427

**WORKING DAYS (BDE)**

Effective: January 1, 2002

The Contractor shall complete the work within 110 working days.

80071

## **CONCRETE WEARING SURFACE**

Effective: June 23, 1994

Revised: October 4, 2016

Description. This work consists of placing a concrete wearing surface, to the specified thickness, on precast concrete members such as deck beams and deck panels. Included in this work is cleaning and preparing the precast concrete surface prior to placement of the concrete wearing surface. This work shall be according to the applicable articles of Section 503 and the following.

Materials. The concrete wearing surface shall be class BS concrete, except as follows, when Steel Bridge Rail is used in conjunction with concrete wearing surface, the 14 day mix design shall be replaced by a 28 day mix design with a compressive strength of 5000 psi (34,500 kPa) and a design flexural strength of 800 psi (5,500 kPa).

Equipment: The equipment used shall be subject to the approval of the Engineer and shall meet the following requirements:

(a) Surface Preparation Equipment. Surface preparation equipment shall be according to the applicable portions of Section 1100 and the following:

(1) Hand-Held Blast Cleaning Equipment. Blast cleaning using hand-held equipment may be performed by high-pressure waterblasting or abrasive blasting. Hand-held blast cleaning equipment shall have oil traps.

Hand-held high-pressure waterblasting equipment shall have a minimum water pressure of 7000 psi (48 MPa).

(2) Vacuum Cleanup Equipment. The equipment shall be equipped with fugitive dust control devices capable of removing wet debris and water all in the same pass. Vacuum equipment shall also be capable of washing the deck with pressurized water prior to the vacuum operation to dislodge all debris and slurry from the deck surface.

(b) Concrete Equipment: Equipment for proportioning and mixing the concrete shall be according to Article 1020.03.

(c) Finishing Equipment. Finishing equipment shall be according to Article 503.03.

(d) Mechanical Fogging Equipment. Mechanical fogging equipment shall be according to 503.03.



## CONSTRUCTION REQUIREMENTS

Surface Preparation. Prior to placement of the concrete wearing surface, the top surface of the precast concrete members shall be clean and free of all foreign material.

All debris of every type, including dirty water, resulting from the cleaning operation shall be reasonably confined during the performance of the cleaning work and shall be immediately and thoroughly removed from the cleaned surfaces and all other areas where debris may have accumulated.

Prior to placement of the concrete wearing surface, the Engineer will inspect the cleaned surface, all areas still contaminated shall be cleaned again at the Contractor's expense.

Wearing Surface Placement. The concrete wearing surface placement shall be according to Article 503.16 of the Standard Specifications. Areas to receive the overlay shall be either thoroughly or continuously wetted with water at least one hour before placement of the concrete wearing surface is started. When the surface is pre-wetted any accumulations of water shall be dispersed or removed prior to placement of the concrete wearing surface.

Plans for anchoring support rails and the mixture-placing procedure shall be submitted to the Engineer for approval.

Curing and Protection. The concrete shall be continuously wet cured for at least 14 days according to Article 1020.13(a)(5). However, if the minimum specified compressive strength or flexural strength is obtained prior to 14 days, the cure time may be reduced, but at no time shall the wet cure be less than 7 days. The concrete shall be protected from low air temperatures according to Article 1020.13(d)(1) or (2), except the protection method shall remain in place for the entire curing period.

Opening to Traffic. The concrete wearing surface without Steel Bridge Rail attached may be opened to traffic when test specimens have obtained a minimum compressive strength of 4000 psi (27,500 kPa) or a minimum flexural strength of 675 psi (4650 kPa), but not prior to the completion of the wet cure. When Steel Bridge Rail is utilized, the concrete wearing surface may be opened when test specimens have obtained a minimum compressive strength of 5000 psi (34,500 kPa) or a minimum flexural strength of 800 psi (5500 kPa), but not prior to the completion of the wet cure.

Method of Measurement. Concrete wearing surface will be measured for payment in place and the area computed in square yards (square meters).

Basis of Payment. This work including cleaning and surface preparation will be paid for at the contract unit price per square yard (square meter) for CONCRETE WEARING SURFACE, of the thickness specified.

## **BRIDGE DECK CONSTRUCTION**

Effective: October 22, 2013

Revised: December 21, 2016

When Diamond Grinding of Bridge Sections is specified, hand finishing of the deck surface shall be limited to areas not finished by the finishing machine and to address surface corrections according to Article 503.16(a)(2). Hand finishing shall be limited as previously stated solely for the purpose of facilitating a more timely application of the curing protection. In addition the requirements of 503.16(a)(3)a. and 503.16(a)(4) will be waived.

### **Revise the Second Paragraph of Article 503.06(b) to read as follows.**

“When the Contractor uses cantilever forming brackets on exterior beams or girders, additional requirements shall be as follows.”

### **Revise Article 503.06(b)(1) to read as follows.**

- “(1) Bracket Placement. The spacing of brackets shall be per the manufacturer’s published design specifications for the size of the overhang and the construction loads anticipated. The resulting force of the leg brace of the cantilever bracket shall bear on the web within 6 inches (150 mm) of the bottom flange of the beam or girder.”

### **Revise Article 503.06(b)(2) to read as follows.**

- “(2) Beam Ties. The top flange of exterior steel beams or girders supporting the cantilever forming brackets shall be tied to the bottom flange of the next interior beam. The top flange of exterior concrete beams supporting the cantilever forming brackets shall be tied to the top flange of the next interior beam. The ties shall be spaced at 4 ft (1.2 m) centers. Permanent cross frames on steel girders may be considered a tie. Ties shall be a minimum of 1/2 inch (13 mm) diameter threaded rod with an adjusting mechanism for drawing the tie taut. The ties shall utilize hanger brackets or clips which hook onto the flange of steel beams. No welding will be permitted to the structural steel or stud shear connectors, or to reinforcement bars of concrete beams, for the installation of the tie bar system. After installation of the ties and blocking, the tie shall be drawn taut until the tie does not vary from a straight line from beam to beam. The tie system shall be approved by the Engineer.”

### **Revise Article 503.06(b)(3) to read as follows.**

- “(3) Beam Blocks. Suitable beam blocks of 4 in x 4 in (100 x 100 mm) timbers or metal structural shapes of equivalent strength or better, acceptable to the Engineer, shall be wedged between the webs of the two beams tied together, within 6 inches (150 mm) of the bottom flange at each location where they are tied. When it is not feasible to have

the resulting force from the leg brace of the cantilever brackets transmitted to the web within 6 inches (150 mm) of the bottom flange, then additional blocking shall be placed at each bracket to transmit the resulting force to within 6 inches (150 mm) of the bottom flange of the next interior beam or girder.”

**Delete the last paragraph of Article 503.06(b).**

**DRILLED SHAFTS**

Effective: October 5, 2015

Revised: October 4, 2016

Revise Section 516 of the Standard Specifications to read:

**“SECTION 516. DRILLED SHAFTS**

**516.01 Description.** This work shall consist of constructing drilled shaft foundations.

**516.02 Materials.** Materials shall be according to the following.

Item	Article/Section
(a) Portland Cement Concrete (Note 1) .....	1020
(b) Reinforcement Bars.....	1006.10
(c) Grout (Note 2) .....	1024.01
(d) Permanent Steel Casing .....	1006.05(d)
(e) Slurry (Note 3)	

Note 1. When the soil contains sulfate contaminates, ASTM C 1580 testing will be performed to assess the severity of sulfate exposure to the concrete. If the sulfate contaminate is >0.10 to < 0.20 percent by mass, a Type II (MH) cement shall be used. If the sulfate contaminate is >0.20 to < 2.0 percent by mass, a Type V cement shall be used. If the sulfate contaminate is ≥ 2.0 percent by mass, refer to ACI 201.2R for guidance.

Note 2. The sand-cement grout mix shall be according to Section 1020 and shall be two to five parts sand and one part Type I or II cement. The maximum water cement ratio shall be sufficient to provide a flowable mixture with a typical slump of 10 in. (250 mm).

Note 3. Slurry shall be bentonite, emulsified polymer, or dry polymer, and shall be approved by the Engineer.

**516.03 Equipment.** Equipment shall be according to the following.

Item	Article/Section
(a) Concrete Equipment	1020.03
(b) Drilling Equipment (Note 1)	
(c) Hand Vibrator	1103.17(a)
(d) Underwater Concrete Placement Equipment	1103.18

Note 1. The drilling equipment shall have adequate capacity, including power, torque and down thrust, to create a shaft excavation of the maximum diameter specified to a depth of 20 percent beyond the depths shown on the plans.

**516.04 Submittals.** The following information shall be submitted on form BBS 133.

(a) Qualifications. At the time of the preconstruction conference, the Contractor shall provide the following documentation.

(1) References. A list containing at least three projects completed within the three years prior to this project's bid date which the Contractor performing this work has installed drilled shafts of similar diameter, length, and site conditions to those shown in the plans. The list of projects shall contain names and phone numbers of owner's representatives who can verify the Contractor's participation on those projects.

(2) Experience. Name and experience record of the drilled shaft supervisor, responsible for all facets of the shaft installation, and the drill operator(s) who will be assigned to this project. The supervisor and operator(s) shall each have a minimum of three years experience in the construction of drilled shafts.

(b) Installation Procedure. A detailed installation procedure shall be submitted to the Engineer for acceptance at least 28 days prior to drilled shaft construction and shall address each of the following items unless otherwise directed by the Engineer in writing.

(1) Equipment List. List of proposed equipment to be used including cranes, drill rigs, augers, boring tools, casing, vibratory hammers, core barrels, bailing buckets, final cleaning equipment, slurry equipment, tremies, or concrete pumps, etc.

(2) General Sequence. Details of the overall construction operation sequence, equipment access, and the sequence of individual shaft construction within each substructure bent or footing group. The submittal shall address the Contractor's proposed time delay and/or the minimum concrete strength necessary before initiating a shaft excavation adjacent to a recently installed drilled shaft.

(3) Shaft Excavation. A site specific step by step description of how the Contractor anticipates the shaft excavation to be advanced based on their evaluation of the subsurface data and conditions expected to be encountered. This sequence shall note the method of casing advancement, anticipated casing lengths, tip elevations and diameters, the excavation tools used and drilled diameters created. The Contractor shall indicate whether wet or dry drilling conditions are expected and if groundwater will be sealed from the excavation.

- (4) Slurry. When the use of slurry is proposed, details on the types of additives to be used and their manufacturers shall be provided. In addition, details covering the measurement and control of the hardness of the mixing water, agitation, circulation, de-sanding, sampling, testing, and chemical properties of the slurry shall be submitted.
- (5) Shaft Cleaning. Method(s) and sequence proposed for the shaft cleaning operation.
- (6) Reinforcement Cage and Permanent Casing. Details of reinforcement placement including rolling spacers to be used and method to maintain proper elevation and location of the reinforcement cage within the shaft excavation during concrete placement. The method(s) of adjusting the reinforcement cage length and permanent casing if rock is encountered at an elevation other than as shown on the plans. As an option, the Contractor may perform soil borings and rock cores at the drilled shaft locations to determine the required reinforcement cage and permanent casing lengths.
- (7) Concrete Placement. Details of concrete placement including proposed operational procedures for free fall, tremie or pumping methods. The sequence and method of casing removal shall also be stated along with the top of pour elevation, and method of forming through water above streambed.
- (8) Mix Design. The proposed concrete mix design(s).
- (9) Disposal Plan. Containment and disposal plan for slurry and displaced water. Containment and disposal plan for contaminated concrete pushed out of the top of the shaft by uncontaminated concrete during concrete placement.
- (10) Access and Site Protection Plan. Details of access to the drilled shafts and safety measures proposed. This shall include a list of casing, scaffolding, work platforms, temporary walkways, railings, and other items needed to provide safe access to the drilled shafts. Provisions to protect open excavations during non-working hours shall be included.

The Engineer will evaluate the drilled shaft installation procedure and notify the Contractor of acceptance, need for additional information, or concerns with the installation's effect on the existing or proposed structure(s).

## CONSTRUCTION REQUIREMENTS

**516.05 General.** Excavation for drilled shaft(s) shall not proceed until written authorization is received from the Engineer. The Contractor shall be responsible for verification of the dimensions and alignment of each shaft excavation as directed by the Engineer.

Unless otherwise approved in the Contractor's installation procedure, no shaft excavation, casing installation, or casing removal with a vibratory hammer shall be made within four shaft diameters center to center of a shaft with concrete that has a compressive strength less than 1500 psi (10,300 kPa). The site-specific soil strengths and installation methods selected will determine the actual required minimum spacing, if any, to address vibration and blow out concerns.

Lost tools shall not remain in the shaft excavation without the approval of the Engineer.

Blasting shall not be used as a method of shaft excavation.

**516.06 Shaft Excavation Protection Methods.** The construction of drilled shafts may involve the use of one or more of the following methods to support the excavation during the various phases of shaft excavation, cleaning, and concrete placement dependent on the site conditions encountered. Surface water shall not flow uncontrolled into the shaft excavation, however water may be placed into the shaft excavation in order to meet head pressure requirements according to Articles 516.06(c) and 516.13.

The following are general descriptions indicating the conditions when these methods may be used.

- (a) **Dry Method.** The dry construction method shall only be used at sites where the groundwater and soil conditions are suitable to permit the drilling and dewatering of the excavation without causing subsidence of adjacent ground, boiling of the base soils, squeezing, or caving of the shaft side walls. The dry method shall consist of drilling the shaft excavation, removing accumulated water, cleaning the shaft base, and placing the reinforcement cage and concrete in a predominately dry excavation.
- (b) **Slurry Method.** The slurry construction method may be used at sites where dewatering the excavation would cause collapse of the shaft sidewalls or when the volume and head of water flowing into the shaft is likely to contaminate the concrete during placement resulting in a shaft defect. This method uses slurry, or in rare cases water, to maintain stability of the shaft sidewall while advancing the shaft excavation. After the shaft excavation is completed, the slurry level in the shaft shall be kept at an elevation to

maintain stability of the shaft sidewall, maintain stability of the shaft base, and prevent additional groundwater from entering the shaft. The shaft base shall be cleaned, the reinforcement cage shall be set, and the concrete shall be discharged at the bottom of the shaft excavation, displacing the slurry upwards.

- (c) Temporary Casing Method. Temporary casing shall be used when either the dry or slurry methods provide inadequate support to prevent sidewall caving or excessive deformation of the shaft excavation. Temporary casing may be used with slurry or be used to reduce the flow of water into the excavation to allow dewatering and concrete placement in a dry shaft excavation. Temporary casing shall not be allowed to remain permanently without the approval of the Engineer.

During removal of the temporary casing, the level of concrete in the casing shall be maintained at a level such that the head pressure inside the casing is a minimum of 1.25 times the head pressure outside the casing, but in no case is less than 5 ft (1.5 m) above the bottom of the casing. Casing removal shall be at a slow, uniform rate with the pull in line with the shaft axis. Excessive rotation of the casing shall be avoided to limit deformation of the reinforcement cage. In addition, the slump requirements during casing removal shall be according to Article 516.12.

When called for on the plans, the Contractor shall install a permanent casing as specified. Permanent casing may be used as a shaft excavation support method or may be installed after shaft excavation is completed using one of the above methods. After construction, if voids are present between the permanent casing and the drilled excavation, the voids shall be filled with grout. Permanent casing shall not remain in place beyond the limits shown on the plans without the specific approval of the Engineer.

When the shaft extends above the streambed through a body of water and permanent casing is not shown, the portion above the streambed shall be formed with removable casings, column forms, or other forming systems as approved by the Engineer. The forming system shall not scar or spall the finished concrete or leave in place any forms or casing within the removable form limits as shown on the plans unless approved as part of the installation procedure. The forming system shall not be removed until the concrete has attained a minimum compressive strength of 2500 psi (17,200 kPa) and cured for a minimum of 72 hours. For shafts extending through water, the concrete shall be protected from water action after placement for a minimum of seven days.

**516.07 Slurry.** When slurry is used, the Contractor shall provide a technical representative of the slurry additive manufacturer at the site prior to introduction of the slurry into the first shaft where slurry will be used, and during drilling and completion of a minimum of one shaft to adjust the slurry mix to the specific site conditions. During construction, the level of the slurry shall be maintained a minimum of 5 feet (1.5 m) above the height required to prevent



caving of the shaft excavation. In the event of a sudden or significant loss of slurry in the shaft excavation, the construction of that foundation shall be stopped and the shaft excavation backfilled or supported by temporary casing, until a method to stop slurry loss, or an alternate construction procedure, has been approved by the Engineer.

- (a) General Properties. The material used to make the slurry shall not be detrimental to the concrete or surrounding ground. Mineral slurries shall have both a mineral grain size that remains in suspension and sufficient viscosity and gel characteristics to transport excavated material to a suitable screening system. Polymer slurries shall have sufficient viscosity and gel characteristics to transport excavated material to suitable screening systems or settling tanks. The percentage and specific gravity of the material used to make the slurry shall be sufficient to maintain the stability of the excavation and to allow proper concrete placement.

If approved by the Engineer, the Contractor may use water and excavated soils as drilling slurry. In this case, the range of acceptable values for density, viscosity and pH, as shown in the following table for bentonite slurry shall be met.

When water is used as the slurry to construct rock sockets in limestone, dolomite, sandstone or other formations that are not erodible, the requirements for slurry testing shall not apply if the entire fluid column is replaced with fresh water after drilling. To do so, fresh water shall be introduced at the top of the shaft excavation and existing water used during drilling shall be pumped out of the shaft excavation from the bottom of the shaft excavation until the entire volume of fluid has been replaced.

- (b) Preparation. Prior to introduction into the shaft excavation, the manufactured slurry admixture shall be pre-mixed thoroughly with clean, fresh water and for adequate time in accordance with the slurry admixture manufacturer's recommendations. Slurry tanks of adequate capacity shall be used for slurry mixing, circulation, storage and treatment. No excavated slurry pits will be allowed in lieu of slurry tanks without approval from the Engineer. Adequate desanding equipment shall be provided to control slurry properties during the drilled shaft excavation in accordance with the values provided in Table 1.
- (c) Quality Control. Quality control tests shall be performed on the slurry to determine density, viscosity, sand content and pH of freshly mixed slurry, recycled slurry and slurry in the shaft excavation. Tests of slurry samples from within two feet of the bottom and at mid-height of the shaft excavation shall be conducted in each shaft excavation during the excavation process to measure the consistency of the slurry. A minimum of four sets of tests shall be conducted during the first eight hours of slurry use on the project. When a series of four test results do not change more than 1% from the initial test, the testing frequency may be decreased to one set every four hours of slurry use. Reports of all tests, signed by an authorized representative of the Contractor, shall be furnished to the

Engineer upon completion of each drilled shaft. The physical properties of the slurry shall be as shown in Table 1.

The slurry shall be sampled and tested less than 1 hour before concrete placement. Any heavily contaminated slurry that has accumulated at the bottom of the shaft shall be removed. The contractor shall perform final shaft bottom cleaning after suspended solids have settled from the slurry. Concrete shall not be placed if the slurry does not have the required physical properties.

Table 1 – SLURRY PROPERTIES				
	Bentonite	Emulsified Polymer	Dry Polymer	Test Method
Density, lb/cu ft (kg/cu m) (at introduction)	65.2 ± 1.6 <sup>1</sup> (1043.5 ± 25.6)	63 (1009.0) max.	63 (1009.0) max.	ASTM D 4380
Density, lb/cu ft (kg/cu m) (prior to concrete placement)	67.0 ± 3.5 <sup>1</sup> (1073.0 ± 56.0)	63 (1009.0) max.	63 (1009.0) max.	ASTM D 4380
Viscosity <sup>2</sup> , sec/qt (sec/L)	46 ± 14 (48 ± 14)	38 ± 5 (40 ± 5)	65 ± 15 (69 ± 16)	ASTM D 6910
pH	9.0 ± 1.0	9.5 ± 1.5	9.0 ± 2.0	ASTM D 4972
Sand Content, percent by volume (at introduction)	4 max.	1 max.	1 max.	ASTM D 4381
Sand Content, percent by volume (prior to concrete placement)	10 max.	1 max.	1 max.	ASTM D 4381
Contact Time <sup>3</sup> , hours	4 max.	72 max.	72 max.	

Note 1. When the slurry consists of only water and excavated soils, the density shall not exceed 70 lb/cu ft (1121 kg/cu m).

Note 2. Higher viscosities may be required in loose or gravelly sand deposits.

Note 3. Contact time is the time without agitation and sidewall cleaning.

**516.08 Obstructions.** An obstruction is an unknown isolated object that causes the shaft excavation method to experience a significant decrease in the actual production rate and requires the Contractor to core, break up, push aside, or use other means to mitigate the obstruction. Subsurface conditions such as boulders, cobbles, or logs and buried infrastructure such as footings, piling, or abandoned utilities, when shown on the plans, shall not constitute an obstruction. When an obstruction is encountered, the Contractor shall notify the Engineer immediately and upon concurrence of the Engineer, the Contractor shall mitigate the obstruction with an approved method.

**516.09 Top of Rock.** The top of rock will be considered as the point where rock, defined as bedded deposits and conglomerate deposits exhibiting the physical characteristics and difficulty of rock removal as determined by the Engineer, is encountered which cannot be drilled with augers and/or underreaming tools configured to be effective in the soils indicated in the contract documents.

**516.10 Design Modifications.** If the top of rock elevation differs from that shown on the plans by more than 10 percent of the length of the drilled shaft above the rock, the Engineer shall be contacted to determine if any drilled shaft design changes may be required. In addition, if the type of soil or rock encountered is not similar to that shown in the subsurface exploration data, the Contractor may be required to extend the drilled shaft length(s) beyond those specified in the plans. In either case, the Engineer will determine if revisions are necessary and the extent of the modifications required.

**516.11 Excavation Cleaning and Inspection.** Materials removed or generated from the shaft excavations shall be disposed of according to Article 202.03.

After excavation, each shaft shall be cleaned. For a drilled shaft terminating in soil, the depth of sediment or debris shall be a maximum of 1 1/2 in. (38 mm). For a drilled shaft terminating in rock, the depth of sediment or debris shall be a maximum of 1/2 in. (13 mm).

A shaft excavation shall be overreamed when, in the opinion of the Engineer, the sidewall has softened, swelled, or has a buildup of slurry cake. Overreaming may also be required to correct a shaft excavation which has been drilled out of tolerance. Overreaming may be accomplished with a grooving tool, overreaming bucket, or other approved equipment. Overreaming thickness shall be a minimum of 1/2 in. (13 mm) and a maximum of 3 in. (75 mm).

**516.12 Reinforcement.** This work shall be according to Section 508 and the following.

The shaft excavation shall be cleaned and inspected prior to placing the reinforcement cage. The reinforcement cage shall be completely assembled prior to drilling and be ready for adjustment in length as required by the conditions encountered. The reinforcement cage shall be lifted using multiple point sling straps or other approved methods to avoid reinforcement

cage distortion or stress. Cross frame stiffeners may be required for lifting or to keep the reinforcement cage in proper position during lifting and concrete placement.

The Contractor shall attach rolling spacers to keep the reinforcement cage centered within the shaft excavation during concrete placement and to ensure that at no point will the finished shaft have less than the minimum concrete cover(s) shown on the plans. The rolling spacers or other approved non-corrosive spacing devices shall be installed within 2 ft (0.6 m) of both the top and bottom of the drilled shaft and at intervals not exceeding 10 ft (3 m) throughout the length of the shaft to ensure proper reinforcement cage alignment and clearance for the entire shaft. The number of rolling spacers at each level shall be one for each 1.0 ft (300 mm) of shaft diameter, with a minimum of four rolling spacers at each level. For shafts with different shaft diameters throughout the length of the excavation, different sized rolling spacers shall be provided to ensure the reinforcement cage is properly positioned throughout the entire length of the shaft.

When a specific concrete cover between the base of the drilled shaft and the reinforcement cage is shown on the plans, the bottom of the reinforcement cage shall be supported so that the proper concrete cover is maintained.

If the conditions differ such that the length of the shaft is increased, additional longitudinal bars shall be either mechanically spliced or lap spliced to the lower end of the reinforcement cage and confined with either hoop ties or spirals. The Contractor shall have additional reinforcement available or fabricate the reinforcement cages with additional length as necessary to make the required adjustments in a timely manner as dictated by the encountered conditions. The additional reinforcement may be non-epoxy coated.

**516.13 Concrete Placement.** Concrete work shall be performed according to the following.

Throughout concrete placement the head pressure inside the drilled shaft shall be at least 1.1 times the head pressure outside the drilled shaft.

Concrete placement shall begin within 1 hour of shaft cleaning and inspection. The pour shall be made in a continuous manner from the bottom to the top elevation of the shaft as shown on the contract plan or as approved in the Contractor's installation procedure. Concrete placement shall continue after the shaft excavation is full and until 18 in. (450 mm) of good quality, uncontaminated concrete is expelled at the top of shaft. Vibration of the concrete will not be allowed when the concrete is displacing slurry or water. In dry excavations, the concrete in the top 10 ft (3 m) of the shaft shall be vibrated.

When using temporary casing or placing concrete under water or slurry, a minimum of seven days prior to concrete placement, a 4 cu yd (3 cu m) trial batch of the concrete mixture shall be

performed to evaluate slump retention. Temporary casing shall be withdrawn before the slump of the concrete drops below 6 in. (150 mm). For concrete placed using the slurry method of construction, the slump of all concrete placed shall be a minimum of 6 in. (150 mm) at the end of concrete placement.

Devices used to place concrete shall have no aluminum parts in contact with concrete.

When the top of the shaft is at the finished elevation and no further concrete placement above the finished elevation is specified, the top of the shaft shall be level and finished according to Article 503.15(a).

Concrete shall be placed by free fall, tremie, or concrete pump subject to the following conditions.

- (a) Free Fall Placement. Concrete shall only be placed by free fall when the rate of water infiltration into the shaft excavation is less than 12 in. (300 mm) per hour and the depth of water in the shaft excavation is less than 3 in. (75 mm) at the time of concrete placement.

Concrete placed by free fall shall fall directly to the base without contacting the reinforcement cage, cross frame stiffeners, or shaft sidewall. Drop chutes may be used to direct concrete to the base during free fall placement.

Drop chutes used to direct placement of free fall concrete shall consist of a smooth tube. Concrete may be placed through either a hopper at the top of the tube or side openings as the drop chute is retrieved during concrete placement. The drop chute shall be supported so that free fall does not exceed 60 ft (18.3 m) for conventional concrete or 30 ft (9.1 m) for self-consolidating concrete. If placement cannot be satisfactorily accomplished by free fall in the opinion of the Engineer, either a tremie or pump shall be used to accomplish the pour.

- (b) Tremie and Concrete Pump Placement. Concrete placement shall be according to Article 503.08, except the discharge end of the steel pipe shall remain embedded in the concrete a minimum of 10 ft (3.0 m) throughout concrete placement when displacing slurry or water.

**516.14 Construction Tolerances.** The following construction tolerances shall apply to all drilled shafts.

- (a) Center of Shaft. The center of the drilled shaft shall be within 3 in. (75 mm) of the plan station and offset at the top of the shaft.

- (b) Center of Reinforcement Cage. The center of the reinforcement cage shall be within 1 1/2 in. (40 mm) of plan station and offset at the top of the shaft.
- (c) Vertical Plumbness of Shaft. The out of vertical plumbness of the shaft shall not exceed 1.5 percent.
- (d) Vertical Plumbness of Reinforcement Cage. The out of vertical plumbness of the shaft reinforcement cage shall not exceed 0.83 percent.
- (e) Top of Shaft. The top of the shaft shall be no more than 1 in. (25 mm) above and no more than 3 in. (75 mm) below the plan elevation.
- (f) Top of Reinforcement Cage. The top of the reinforcement cage shall be no more than 1 in. (25 mm) above and no more than 3 in. (75 mm) below the plan elevation.
- (g) Bottom of shaft. Excavation equipment and methods used to complete the shaft excavation shall have a nearly planar bottom. The cutting edges of excavation equipment used to create the bottom of shafts in rock shall be normal to the vertical axis of the shaft within a tolerance of 6.25 percent.

**516.15 Method of Measurement.** This work will be measured for payment in place and the volume computed in cubic yards (cubic meters). The volume will be computed using the plan diameter of the shaft multiplied by the measured length of the shaft. The length of shaft in soil will be computed as the difference in elevation between the top of the drilled shaft shown on the plans, or as installed as part of the Contractor's installation procedure, and the bottom of the shaft or the top of rock (when present) whichever is higher. The length of shaft in rock will be computed as the difference in elevation between the measured top of rock and the bottom of the shaft.

When permanent casing is specified, it will be measured for payment in place, in feet (meters). Permanent casing installed at the Contractor's option will not be measured for payment.

Reinforcement furnished and installed will be measured for payment according to Article 508.07.

**516.16 Basis of Payment.** This work will be paid for at the contract unit price per cubic yard (cubic meter) for DRILLED SHAFT IN SOIL, and/or DRILLED SHAFT IN ROCK.

Permanent casing will be paid for at the contract unit price per foot (meter) for PERMANENT CASING.

Reinforcement furnished and installed will be paid for according to Article 508.08.

Obstruction mitigation will be paid for according to Article 109.04.”

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor

performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

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

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

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

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

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

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

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

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

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



for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#).

The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

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

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

### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

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

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

#### **1. Minimum wages**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each

classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

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

## 3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

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

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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

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

##### b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

#### **10. Certification of eligibility.**

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

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

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

### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

### **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

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

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

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

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

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

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

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

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

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

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

### 1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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



**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

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

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

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

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

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

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

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

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

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

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

## Contract Provision - Cargo Preference Requirements

In accordance with Title 46 CFR § 381.7 (b), the contractor agrees—

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

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

Provisions (1) and (2) apply to materials or equipment that are acquired solely for the project. The two provisions do not apply to goods or materials that come into inventories independent of the project, such as shipments of Portland cement, asphalt cement, or aggregates, when industry suppliers and contractors use these materials to replenish existing inventories.

