

AGREEMENT

This is an AGREEMENT made and entered into this _____ day
of _____, 20_____, by and between the County of Humboldt, a
political subdivision of the State of California (hereinafter referred to as COUNTY)
and _____ Mercer-Fraser Company _____,
a corporation organized and existing under the laws of the State of California,
hereinafter referred to as "CONTRACTOR".

Section 1 - SCOPE OF WORK

Contractor shall furnish all Labor, Tools and Materials and perform all the work for the:

**STORM DAMAGE REPAIR ON PALMER BOULEVARD
(3H065) PM 0.33
FEDERAL PROJECT NO.: FEMA-4434-DR-CA PW-208
CONTRACT NO.: 219311**

in accordance with the contract documents referred to in Section 3 of this Agreement.

Section 2 - CONTRACT PRICE

County shall pay, and Contractor shall accept Contractor's Bid Prices, as shown on EXHIBIT "A" attached hereto and made a part hereof, as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Agreement; also for all loss or damage, arising out of the work aforesaid, or from the actions of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by County, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Specifications, and the requirements of the Engineer.

Section 3 - CONTRACT DOCUMENTS

The complete contract between the parties hereto shall consist of the following, hereinafter referred to as the CONTRACT DOCUMENTS:

- Notice to Bidders
- Plans and Drawings
- Bid Form
- Bidder's Bond
- Supplemental Project Information
- Performance Bond
- Payment Bond
- This Agreement
- Special Provisions
- Supplemental Project Information

And, as published by the Department of Transportation, State of California, except as modified by the Special Provisions:

- Standard Plans - dated 2024
- Standard Specifications - dated 2024
- Equipment Rental Rates in effect at the time the work is performed

And, as published by the California Department of Industrial Relations, and the California Business, Transportation and Housing Agency:

- General Prevailing Wage Rates
- Labor and Surcharge Rates

And any addenda to any of the above documents, all of which are on file in the office of the Director of Public Works of the County of Humboldt. Each of said CONTRACT DOCUMENTS is incorporated and made a part of this Agreement by the reference contained in this Section.

All rights and obligations of the County and the Contractor are fully set forth and described in the Contract Documents. All of the above named documents are intended to be complimentary, so that any work called for in one, and mentioned in the other is to be performed and executed the same as if mentioned in all said documents.

Section 4 - BEGINNING OF WORK

Following receipt and full execution and approval of the Contract Documents, and posting of the requisite Bonds as called for therein, the COUNTY will issue a "Notice to Proceed". Under no circumstances shall the CONTRACTOR enter upon the site of work until receipt of the "Notice to Proceed", or unless so authorized in writing by the COUNTY.

Section 5 - TIME OF COMPLETION

The work called for in this Agreement shall be commenced within fifteen (15) days of receipt of Notice to Proceed by COUNTY and shall be fully completed within a period of 60 working days beginning on the fifteenth calendar day after the date of said approval of contract.

Section 6 - PREVAILING WAGE

Copies of the prevailing wage rates of per diem wages are on file in the Humboldt County Public Works office at 1106 Second Street, Eureka, California and are available to any interested person on request.

Section 7 - WORKERS' COMPENSATION

By my signature hereunder, as CONTRACTOR, I certify that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Section 8 - COMPLIANCE WITH LAWS

The Contractor agrees to comply with all local, state, and federal laws and regulations, including but not limited to the Americans With Disabilities Act. The Contractor further agrees to comply with any applicable federal, state or local licensing standards, any applicable accrediting standards, and any other applicable standards or criteria established locally or by the state or federal governments.

This agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 9 - NOTICES

All notices shall be in writing and delivered in person or transmitted by mail. Notices required to be given to the COUNTY shall be addressed as follows:

Humboldt County Department of Public Works
1106 Second Street, Eureka, California, 95501

Notices required to be given to CONTRACTOR shall be addressed as follows:

IN WITNESS WHEREOF, The parties hereto have entered into this Agreement as of the date first above set forth.

COUNTY OF HUMBOLDT

BY _____
(SEAL) Chair, Board of Supervisors
of the County of Humboldt,
State of California

ATTEST:

TRACY DAMICO
Clerk of the Board of Supervisors
of the County of Humboldt,
State of California

BY _____
Clerk of the Board

MERCER-FRASER COMPANY

BY _____

TITLE _____

BY _____

TITLE _____

(Two Signatures Required For Corporation)

APPROVED AS TO FORM:

BY N / A
Deputy County Counsel

INSURANCE CERTIFICATES REVIEWED
AND APPROVED:

BY _____
Risk Management

REVISED BID FORM (EXHIBIT A)
STORM DAMAGE REPAIR ON PALMER BOULEVARD
(3H065) PM 0.33
FEDERAL PROJECT NO.: FEMA-4434-DR-CA PW-208
CONTRACT NO.: 219311

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	100100	DEVELOP WATER SUPPLY	LS	1	25,000.00	25,000.00
2	120090	CONSTRUCTION AREA SIGNS	EA	10	800.00	8,000.00
3	120100	TRAFFIC CONTROL SYSTEM	LS	1	41,000.00	41,000.00
4	120165	CHANNELIZER (SURFACE MOUNTED)	EA	8	80.00	640.00
5	129000	TEMPORARY RAILING (TYPE K)	LF	280	72.00	20,160.00
6	129105	TEMPORARY CRASH CUSHION TL-2	EA	2	3,000.00	6,000.00
7	130100	JOB SITE MANAGEMENT	LS	1	18,000.00	18,000.00
8	130201	WATER POLLUTION CONTROL PROGRAM	LS	1	1,400.00	1,400.00
9	130610	TEMPORARY CHECK DAM	LF	10	35.00	350.00
10	130670	TEMPORARY REINFORCED SILT FENCE	LF	210	19.00	3,990.00
11	130710	TEMPORARY CONSTRUCTION ENTRANCE	EA	1	6,000.00	6,000.00
12	170103	CLEARING AND GRUBBING	LS	1	14,000.00	14,000.00
13	190101	ROADWAY EXCAVATION	CY	86	185.00	15,910.00
14	192049	F STRUCTURE EXCAVATION (SOLDIER PILE WALL)	CY	27	500.00	13,500.00
15	193029	F STRUCTURE BACKFILL (SOLDIER PILE WALL)	CY	14	750.00	10,500.00
16	193116	F CONCRETE BACKFILL (SOLDIER PILE WALL)	CY	36	650.00	23,400.00
17	193119	F LEAN CONCRETE BACKFILL	CY	16	280.00	4,480.00
18	210212	DRY SEED	SF	2217	0.75	1,662.75
19	210350	FIBER ROLL	LF	350	8.00	2,800.00
20	210420	STRAW	SF	2217	1.00	2,217.00
21	260203	CLASS 2 AGGREGATE BASE	CY	54	350.00	18,900.00
22	390132	HOT MIX ASPHALT (TYPE A)	TON	33	600.00	19,800.00
23	394073	PLACE HOT MIX ASPHALT DIKE (TYPE A)	LF	90	65.00	5,850.00
24	490333	P STEEL SOLDIER PILE (W 18 X 130)	LF	308	180.00	55,440.00
25	490403	30" DRILLED HOLE	LF	295	390.00	115,050.00
26	575004	F TIMBER LAGGING	MFBM	5	7,000.00	35,000.00
27	590120	CLEAN AND PAINT STEEL SOLDIER PILING	LS	1	12,000.00	12,000.00
28	680902	6" PERFORATED PLASTIC PIPE UNDERDRAIN	LF	75	190.00	14,250.00
29	680902(A)	6" PERFORATED PLASTIC PIPE UNDERDRAIN (WALL DRAIN)	LF	64	230.00	14,720.00
30	680903	6" NON-PERFORATED PLASTIC PIPE UNDERDRAIN	LF	35	210.00	7,350.00
31	680903(A)	6" NON-PERFORATED PLASTIC PIPE UNDERDRAIN (WALL DRAIN)	LF	14	260.00	3,640.00
32	723095	ROCK SLOPE PROTECTION (20 lb, Class I, METHOD B) (CY)	CY	2	1,400.00	2,800.00
33	780230	SURVEY MONUMENT (TYPE D)	EA	1	3,000.00	3,000.00
34	832006	MIDWEST GUARDRAIL SYSTEM (STEEL POST)	LF	87.5	60.00	5,250.00
35	832070	VEGETATION CONTROL (MINOR CONCRETE)	SY	65	175.00	11,375.00

ATTACHMENT 3

Attachment 2

ITEM NO.	ITEM CODE		ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
36	839521	F	CABLE RAILING	LF	64	120.00	7,680.00
37	839580		END ANCHOR ASSEMBLY (TYPE SFT-M)	EA	1	1,875.00	1,875.00
38	839584		ALTERNATIVE IN-LINE TERMINAL SYSTEM	EA	1	3,800.00	3,800.00
39	999990		MOBILIZATION	LS	1	58,900.00	58,900.00

NOTE: ITEM CODE LETTER DESIGNATION; F= FINAL PAY QUANTITY

BID TOTAL

\$615,689.75

checked by BR



Mark Benzinger
(Bidder's Signature)

Mark Benzinger, President

(Title)



County of Humboldt
Department of Public Works
1106 Second Street
Eureka, CA 95501
TEL (707) 445-7377
ADDENDUM NO. 1
(Issued November 12, 2025)

STORM DAMAGE REPAIRS TO PALMER BOULEVARD (3H065) POST MILE 0.33
CONTRACT NO.: 219311

The Special Provisions and Plans are hereby modified in accordance with the following:

1. Add to Section 7-1.11A US DOT Suspension of DBE Program IFR, of the Special Provisions with the following:
Attachment 1 – 14 pages from the Federal Register – Interim Final Rule (IFR) Effective October 3, 2025, US DOT Suspension of DBE Program.
2. Replace section 6-1.04 Buy America, of the Special Provisions with the following:
Attachment 2 – 4 pages of a revised section 6-1.04 Buy America provisions.
3. Remove section 5-1.13B from the special provisions.
4. Remove sections 2-1.20, 2-1.33B(2)(b), and 5-1.13B regarding DBE from the 2024 Standard Specifications.
5. Replace Bid Form (Exhibit A) of the Special Provisions with the following:
Attachment 3 – 2 pages of revised Bid Form (Exhibit A) with corrected bid item descriptions 30-35.
6. Geotechnical Memorandum for Palmer Boulevard PM 0.33 is available on the County's website.
<http://humboldtgov.org/Bids.aspx>

IMPORTANT

This Addendum is being sent EMAIL/FAX. To indicate receipt of this Addendum please sign and send back to the Department of Public Works.

EMAIL: PWEEngineering@co.humboldt.ca.us
or FAX: (707) 445-7409

Received by:

Cassie Cappi

Date 11/19/25

Company:

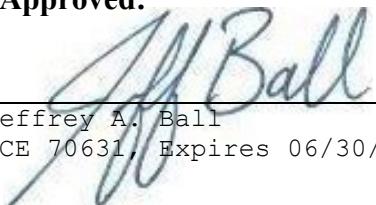
Mercer-Fraser Company

Pages
Received 22

Total Pages Sent 22

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Approved:



Jeffrey A. Ball
RCE 70631, Expires 06/30/2027

11-12-2025

Date

Rules and Regulations

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the **Code of Federal Regulations**, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The **Code of Federal Regulations** is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA-2025-0412]

Accepted Means of Compliance for Small Unmanned (sUA) Aircraft Category 2 and Category 3 Operations Over Human Beings; Aerial Vehicle Safety Solutions Inc. (AVSS)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for sUA Category 2 and Category 3 operations over human beings. The Administrator finds that AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, dated January 7, 2025, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: The means of compliance is accepted effective October 3, 2025.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR-624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3414; email Kimberly.H.Luu@faa.gov.

AVSS Contact: Josh Ogden, CEO, AVSS, 570 Queen Street, Suite 600, Fredericton, New Brunswick, E3B-6Z6, Canada, +1 (650) 741-1326; Info@avss.co.

SUPPLEMENTARY INFORMATION:

Background

Title 14, **Code of Federal Regulations**, part 107, subpart D, prescribes the

eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.120(a) for Category 2 operations or § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.120(a) or § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare that sUA for Category 2 or Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notification of availability serves as a formal acceptance by the FAA of the AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, as an acceptable means of compliance, but not the only means of compliance with §§ 107.120(a) and 107.130(a).

Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to AVSS's "Means of Compliance (MOC) with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft (sUA)," revision 6, will not be automatically accepted and will require further FAA acceptance for any revisions to be considered an accepted means of compliance.

Issued in Kansas City, Missouri, on September 30, 2025.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2025-19435 Filed 10-2-25; 8:45 am]

BILLING CODE 4910-13-P

Federal Register

Vol. 90, No. 190

Friday, October 3, 2025

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Parts 23 and 26

[Docket No. DOT-OST-2025-0897]

RIN 2105-AF33

Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule (IFR) ensures that the U.S. Department of Transportation (DOT or Department) operates its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Programs (collectively, Programs) in a nondiscriminatory fashion—in line with law and the U.S. Constitution. The IFR removes race- and sex-based presumptions of social and economic disadvantage that violate the U.S. Constitution.

DATES: This IFR is effective October 3, 2025. Comments must be received on or before November 3, 2025. To the extent practicable, DOT will consider late-filed comments.

ADDRESSES: You may submit comments identified by the docket number DOT-OST-2025-0897 by any of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number DOT-OST-2025-0897 or Regulatory Identifier Number

ATTACHMENT 1

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Attachment 2

(RIN) 2105-AF33 for this rulemaking. DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this IFR contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." Submissions containing CBI should be sent to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Any commentary that OST receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Electronic Access and Filing

A copy of the IFR, all comments received, and all background material may be viewed online at <http://www.regulations.gov>. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <http://www.ofr.gov> and the Government Publishing Office's website at <http://www.gpo.gov>.

FOR FURTHER INFORMATION CONTACT:
Peter Constantine, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 658-9670 or peter.constantine@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Spanning nearly 40 years, the Department's DBE and ACDBE programs are small business initiatives intended to level the playing field for businesses seeking to participate in federally assisted contracts and in airport concessions. Rooted in a desire to give small businesses a fair shake in the process, the Programs must balance a desire to help the small business community with an overriding government obligation to serve the public. The government must undertake all these efforts consistent with law—including constitutional nondiscrimination requirements that establish the conditions for national harmony and unity. This IFR advances the administration's goals of nondiscrimination, fairness, and excellence in serving the American public.

Although the Programs aim to assist small businesses owned and controlled by "socially and economically disadvantaged individuals," Congress has mandated by statute that DOT treat certain individuals—women and members of certain racial and ethnic groups—as "presumed" to be disadvantaged.¹ Other individuals do not benefit from that statutory presumption. This means that two similarly situated small business owners may face different standards for entering the program, based solely on their race, ethnicity, or sex.

On September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program's statutory race- and sex-based presumptions likely do not comply with the Constitution's promise of equal protection under the law.² The Court held that the Government may only use a racial classification to "further a compelling government interest" and may only use race in a "narrowly

¹ Congress has provided that: (1) "women shall be presumed to be socially and economically disadvantaged individuals"; and (2) the term "socially and economically disadvantaged individuals" should otherwise be given the meaning given by section 8(d) of the Small Business Act and its implementing regulations. *See* Infrastructure Investment and Jobs Act, Public Law 117-58, 11101(e)(2) (B) (2021) (DBE program for highway and transit funding); 49 U.S.C. 47107(e)(1) (ACDBE program); 49 U.S.C. 47113(a)(2) (DBE program for airport funding). Section 8(d) of the Small Business Act and its implementing regulations create a rebuttable presumption that "Black Americans," "Hispanic Americans," "Native Americans," "Asian Pacific Americans," and "Subcontinent Asian Americans" are disadvantaged. *See* 15 U.S.C. 637(d)(3); 13 CFR 124.103(b)(1).

² *Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23-cv-00072, 2024 WL 4267183 (Sept. 23, 2024).

tailored fashion." It held that although courts have identified a compelling government interest in "remediating specific, identified instance[s] of past discrimination that violated the constitution or a statute," the Government did not present evidence of such discrimination by DOT against each of the groups covered by the DBE program's presumptions. The Court held, moreover, that the presumptions were not narrowly tailored because Congress used an unexplained "scattershot" approach in identifying the covered groups, and because the presumptions had no "logical end point." The Court also held that the sex-based presumptions failed heightened scrutiny. Accordingly, the Court issued a preliminary injunction that prohibits DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. DOT has implemented the injunction by requiring funding recipients to remove DBE contract goals from any contracts on which the plaintiffs intend to bid.

On January 20, 2025, the President issued Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, which affirmed that "Americans deserve a government committed to serving every person with equal dignity and respect" and directed agencies to recommend actions to align their programs and activities with this policy. On January 21, 2025, the President issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which ordered agencies to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements."

On March 21, 2025, the Attorney General issued a memorandum to all Federal agencies on implementing these Executive Orders.³ The Attorney General noted that "federal policies that give preference to job applicants, employees, or contractors based on race or sex trigger heightened scrutiny under the Constitution's equal protection guarantees and can only survive in rare circumstances." The Attorney General directed all Federal agencies immediately to "[d]iscontinue any policies that establish numerical goals, targets, or quotas based on race or sex," and to "[r]emove any contracting or

³ Memorandum from the Attorney General for All Federal Agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations* (March 21, 2025), available at <https://www.justice.gov/ag/media/1409556/dl?inline>.

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funding requirement or guidance that induces, requires, or encourages private parties to adopt discriminatory practices.”

On February 19, 2025, the President issued Executive Order 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, which directed agencies to identify “unconstitutional regulations and regulations that raise serious constitutional difficulties,” and to target those regulations for repeal. On April 9, 2025, the President issued a memorandum directing that this effort should prioritize regulations that conflict with certain Supreme Court decisions, including *Students for Fair Admissions, Inc. v. Harvard (SFFA)*.⁴

In accordance with the directives of the President and the Attorney General, DOT and the U.S. Department of Justice (“DOJ”) have evaluated the DBE and ACDBE programs. DOT and DOJ, consistent with the ruling of the District Court, have determined that the race- and sex-based presumptions of DOT’s DBE programs are unconstitutional. In *SFFA*, the Supreme Court held that race-based admissions programs at universities violated the Equal Protection Clause of the Fourteenth Amendment—and, by corollary, Title VI of the Civil Rights Act. In light of *SFFA*, multiple Federal courts have held unlawful the use of presumptions similar to those used in the DBE and ACDBE programs. In *Ultima Serv. Corp. v. U.S. Dep’t of Ag.*, the Eastern District of Tennessee held that a Small Business Act program violated the equal protection component of the Fifth Amendment’s Due Process Clause to the extent that it used the exact same type of race-based presumptions used by the DBE and ACDBE programs.⁵ And in *Nuziard v. Minority Business Development Agency*, the Northern District of Texas held that a race-based statutory presumption of disadvantage was unconstitutional and that the U.S. Department of Commerce’s application of this statutory preference violated the equal protection principle of the Fifth Amendment.⁶ As with the presumptions at issue in *Ultima* and *Nuziard*, there is not a strong basis in evidence that the race- and sex-based presumptions used by the DBE and ACDBE programs are necessary to support a compelling governmental interest, and the presumptions are not narrowly tailored.

⁴ 600 U.S. 181 (2023).

⁵ *Ultima Servs. Corp. v. U.S. Dep’t of Agric.*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

⁶ *Nuziard v. Minority Bus. Dev. Agency*, 721 F. Supp. 3d 431 (N.D. Tex. 2024).

The government has no compelling justification for engaging in overt race or sex discrimination in the awarding of contracts in the absence of clear and individualized evidence that the award is needed to redress the economic effects of actual previous discrimination suffered by the awardee. For these reasons, the presumptions must be disregarded, and the Department’s DBE and ACDBE programs must be administered in all other respects in accordance with the law and consistent with the U.S. Constitution.

On May 28, 2025, DOT (represented by DOJ), along with the plaintiffs in the litigation in the U.S. District Court for the Eastern District of Kentucky, asked the Court to enter a Consent Order resolving a constitutional challenge to the DBE program.⁷ The motion is currently pending. In the proposed Consent Order, DOT stipulated and agreed that “the DBE program’s use of race- and sex-based presumptions of social and economic disadvantage . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution.” The parties asked the Court to declare that “the use of DBE contract goals in a jurisdiction, where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption, violates the equal protection component of the Due Process Clause of the Fifth Amendment,” and to “hold and declare that [DOT] may not approve any Federal, State, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption.”

On June 25, 2025, the Solicitor General wrote to the Speaker of the House, consistent with 28 U.S.C. 530D, to advise the Speaker that DOJ had concluded that the DBE program’s presumptions violate the U.S. Constitution, that DOJ would no longer defend the presumptions in court, and that DOJ had taken that position in ongoing litigation.⁸ The Solicitor General noted that DOJ “had previously defended the DBE program’s race-and sex-based presumptions by pointing to societal discrimination against minority-owned businesses generally.” He stated, however, that “[c]onsistent with *SFFA*’s rejection of a similar justification in the university-admissions context, [DOJ] has determined that an interest in

remedying the effects of societal discrimination does not justify the use of race-and sex-based presumptions in the DBE program.” The Solicitor General also reported that DOJ has determined that “like the admissions programs at issue in *SFFA*, the DBE program relies on arbitrary, overbroad, and underinclusive racial categories and lacks any logical end point.” DOT agrees with and adopts the Solicitor General’s analysis.

In light of DOT and DOJ’s determination that the DBE program’s race- and sex-based presumptions are unconstitutional, DOT is issuing this IFR to remove the presumptions from the DBE program regulations set forth in 49 CFR part 26. Because the ACDBE presumptions are functionally identical and suffer the same constitutional infirmity, this IFR also removes the presumptions from the ACDBE regulations set forth in 49 CFR part 23. To ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance in whole or in part on claims of disadvantage based on race or sex, this IFR requires each Unified Certification Program (UCP) to reevaluate any currently certified DBE or ACDBE, to recertify any DBE or ACDBE that meets the new certification standards, and to decertify any DBE or ACDBE that does not meet the new certification standards. The IFR includes certain requirements that apply during the pendency of this reevaluation process.

II. Revisions

Part 26

Subpart A—General

1. Objectives (§ 26.1)

The Department amends § 26.1 to clarify the proper objectives of the DBE program. The Department’s amendments replace references to the DBE program being “narrowly tailored” with an objective intended to ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service. These amendments center the DBE program’s purpose of leveling the playing field for businesses owned and controlled by socially and economically disadvantaged individuals while providing excellent service to the American people.

2. Definitions (§ 26.5)

The Department changes the definition of “socially and economically disadvantaged individual” in § 26.5 to

⁷ Joint Motion for Entry of Consent Order, *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-00072 (E.D. Ky. May 28, 2025).

⁸ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

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remove the race- and sex-based presumptions that DOT and DOJ and have found to violate the Fifth Amendment. Under the revised rule, any individual seeking to demonstrate that he or she is a “socially and economically disadvantaged individual” will be required to make the same individualized showing of disadvantage, regardless of the individual’s race or sex.

In furtherance of these legal conclusions, the IFR also replaces the terms “race-neutral” and “race-conscious” in § 26.5 with “DBE-neutral” and “DBE-conscious” and modifies the definitions slightly for the same reasons.

3. Recordkeeping and Reporting (§ 26.11)

Similarly, the IFR eliminates the requirement in § 26.11(c)(2)(iv) for recipients to obtain bidders list information about the majority owner’s race and sex for all DBEs and non-DBEs who bid as prime contractors and subcontractors on each of a recipient’s federally assisted contracts, and then renames the requirements in current §§ 26.11(c)(v) through (c)(vii) as §§ 26.11(c)(iv) through (c)(vi).

The IFR also eliminates the requirement in § 26.11(e)(1) that recipients report and categorize the percentage of in-State and out-of-State DBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 26.11(e)(5) and (6) that recipients report the number of in-State and out-of-State applications for an “individualized” determination of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the DBE program, which renders these reporting requirements unnecessary. The IFR further renames the reporting requirements in current §§ 26.11(e)(2) through (e)(4) as §§ 26.11(e)(1) through (e)(3).

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

4. Recipient Monitoring Responsibilities (§ 26.37)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in § 26.37(b).

5. Fostering Small Business Participation (§ 26.39)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in §§ 26.39(b)(1) and (5).

Subpart C—Goals, Good Faith Efforts, and Counting

6. Setting Goals (§ 26.45)

For consistency, the IFR replaces the phrase “race-neutral DBE program” with “DBE-neutral program” in § 26.45(a)(2).

For consistency, the IFR amends the second sentence of § 26.45(b) to replace the word “discrimination” with “social and economic disadvantage” so it will read as follows: “The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage.”

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 26.45(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used. The Department makes the same clarification regarding the use of disparity studies in § 26.45(d)(ii).

For consistency, the IFR amends § 26.45(f)(3) to remove references to race-neutral and race-conscious measures.

The IFR amends § 26.45(g)(1) to remove consultation requirements for minority and women’s contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

The IFR amends § 26.45(h) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language in § 26.45(h) to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 26.111.

7. Failing To Meet Overall Goals (§ 26.47)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” in § 26.47(c)(4) and § 26.47(d).

The IFR adds § 26.47(e) to provide that until a Unified Certification Program (UCP) completes the reevaluation process described in § 26.111, the compliance provisions of

§ 26.47 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

8. Means Used To Meet Overall Goals (§ 26.51)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” throughout § 26.51 and the corresponding examples.

The IFR adds § 26.51(h) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not set any contract goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

9. Counting DBE Participation Toward Goals (§ 26.55)

The IFR adds § 26.55(i) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not count any DBE participation toward DBE goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

Subpart D—Certification Standards

10. Burden of Proof (§ 26.61)

The IFR eliminates § 26.61(b)(2), which imposed a burden of proof on certifiers with respect to individuals subject to the race- and sex-based presumptions that the IFR eliminates.

11. Social and Economic Disadvantage (§ 26.67)

The IFR revises § 26.67 to implement the removal of unconstitutional race- and sex-based presumptions. The IFR requires all small business concerns to demonstrate social and economic disadvantage based on their own experiences and circumstances without reliance in whole or in part on race or sex.

Subpart F—Compliance and Enforcement

12. Reevaluation Process (§ 26.111)

This IFR adds § 26.111 to require each UCP to reevaluate any currently certified DBE, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any

decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 23 with respect to reevaluation of ACDBEs.

Part 23

Subpart A—General

13. Aligning Part 23 With Part 26 Objectives (§ 23.1)

The IFR amends the program objectives for the ACDBE program in § 23.1 that are similar to the amendments to the DBE program objectives in § 26.1.

14. Definitions (§ 23.3)

The IFR amends the definition of the phrase "socially and economically disadvantaged individual" in § 23.3 to conform to the definition of the phrase in § 26.5. In addition, the IFR replaces the terms "race-conscious" and "race-neutral" with "ACDBE-conscious" and "ACDBE-neutral" in § 23.3.

Subpart B—ACDBE Programs

15. Measures To Ensure Nondiscrimination Participation of ACDBEs (§ 23.25)

For consistency, the IFR replaces the words "race-neutral" and "race-conscious" with "DBE-neutral" and "DBE-conscious" in §§ 23.25(d) and (e).

The IFR adds § 23.25(h) to provide that until a UCP completes the reevaluation process described in § 23.81, a recipient covered by that UCP may not set concession-specific goals or use any of the other methods described in § 23.25(e). This provision ensures that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

16. Fostering Small Business Participation (§ 23.26)

For consistency, the IFR replaces the words "race-neutral" with "DBE-neutral" in § 23.26(b)(1).

For consistency, the IFR replaces the words "minority and women owned" with "socially and economically disadvantaged" in § 23.26(d)(5).

For consistency, the IFR replaces the word "gender" with "sex" in § 23.26(e).

17. Reporting and Recordkeeping (§ 23.27)

The IFR eliminates the requirement in § 23.27(c)(2)(iv) for recipients to obtain information about the majority owner's race and sex for all ACDBEs and non-ACDBEs who seek to work on each of a recipient's concession opportunities, and then renames the requirements in current §§ 23.27(c)(v) through (c)(vii) as §§ 23.27(c)(iv) through (c)(vi). The IFR also eliminates the requirement in § 23.27(d)(1) that recipients report and categorize the percentage of in-State and out-of-State ACDBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 23.27(d)(5) and (6) that recipients report the number of in-State and out-of-State applications for "individualized" determinations of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the ACDBE program, which renders these reporting requirements unnecessary. The IFR further renames the reporting requirements in current §§ 23.27(d)(2) through (d)(4) as §§ 23.27(d)(1) through (d)(3).

Subpart D—Goals, Good Faith Efforts, and Counting

18. Goal and Consultation Requirements (§§ 23.41, 23.43)

The IFR amends § 23.41(d) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 23.81.

The IFR amends § 23.43(b) to remove consultation requirements for minority and women's contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

19. Setting Goals (§ 23.51)

For consistency, the Department amends § 23.51(a) to replace the words "discrimination and its effects" with "social and economic disadvantage." For consistency, the IFR replaces the

words "race-neutral" and "race-conscious" with "ACDBE-neutral" and "ACDBE-conscious" in §§ 23.51(f), (g), and (h), and in § 23.51(d)(5).

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 23.51(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used.

20. Counting ACDBE Participation During Transition Period (§§ 23.53, 23.55)

The IFR adds § 23.53(g) and § 23.55(m) to provide that until a UCP completes the reevaluation process described in § 23.81, recipients covered by that UCP, and car rental companies operating at airports covered by that UCP, may not count any ACDBE participation toward ACDBE goals. These provisions ensure that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

21. Failing To Meet Overall Goals (§ 23.57)

For consistency, the IFR replaces the words "race-conscious" and "race-neutral" with "DBE-conscious" and "DBE-neutral" in § 23.57(b)(4) and § 23.57(c).

The IFR adds § 23.57(d) to provide that until a UCP completes the reevaluation process described in § 23.81, the compliance provisions of § 23.57 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

22. Reevaluation Process (§ 23.81)

This IFR adds § 23.81 to require each UCP to reevaluate any currently certified ACDBE, to recertify any ACDBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation

process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 26 with respect to reevaluation of DBEs.

III. Public Proceedings

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies to publish a final rule without first seeking public comment on a proposed rule "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." DOT finds that providing advance notice and an opportunity to comment on these regulatory changes pertaining to the DBE and ACDBE programs would be impracticable, unnecessary, and contrary to the public interest. Consistent with the letter authored by the Solicitor General and discussed elsewhere in the preamble,⁹ DOT has determined that race- and sex-based presumptions of the DBE and ACDBE programs violate the U.S. Constitution. In the absence of this IFR, however, DOT's own regulations would continue to require funding recipients to apply those very same presumptions. Allowing this confusing and contradictory situation to continue during a notice-and-comment process would be impracticable and contrary to the public interest. Further, notice-and-comment is unnecessary where a regulatory action is required as a matter of law to ensure consistency with rulings of the United States Supreme Court. It is well-established that an agency is not required to continue to enforce a statutory provision that it has found to be unconstitutional.¹⁰ By the

⁹ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025). <https://www.justice.gov/oip/media/1404871/dl?inline>.

¹⁰ See *In re Aiken County*, 725 F.3d 255, 259 (D.C. Cir. 2013) (Kavanaugh, J.) ("If the President has a constitutional objection to a statutory mandate or prohibition, the President may decline to follow the law unless and until a final Court order dictates otherwise. . . . [T]his basic constitutional

same token, an agency is not required to subject the public to unconstitutional requirements. This IFR provides notice of the amendments to the regulations' provisions and invites the public to comment. DOT has determined, however, that it should not delay the effectiveness of the amendments and that it should act immediately to remedy the unconstitutional programs. For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to DOT's decision to make this IFR effective upon publication.

IV. Regulatory Analyses and Notices

A. Executive Order: 12866 ("Regulatory Planning and Review"), Executive Order 13563 ("Improving Regulation and Regulatory Review"), and DOT Regulatory Policies and Procedures

The IFR is a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," as supplemented by Executive Order 13563, "Improving Regulation and Regulatory Review." Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Executive Order.

The IFR amends reporting and eligibility requirements for the Department's Airport Concession Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program. These programs are implemented and overseen by recipients of certain Department funds. The changes to the requirements would affect businesses participating in the programs, recipients of Department funds who oversee the programs, and the Department.

The IFR replaces the race- and sex-based presumptions previously embedded in these programs with a requirement for individualized demonstrations of social and economic disadvantage. The IFR also modifies terminology and data reporting requirements to align with constitutional principles while maintaining the programs' statutory objectives.

Need for Regulatory Revisions

The IFR is being issued pursuant to legal determinations by DOT and DOJ that the race- and sex-based presumptions previously embedded in these programs are unconstitutional. In addition to legal compliance, this action corrects a regulatory failure—namely,

principle[] appl[ies] to the President and subordinate executive agencies."); Office of Legal Counsel Opinion, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199 (1994).

reliance on presumptions that no longer withstand judicial scrutiny—by shifting to individualized determinations. The IFR aligns the programs with constitutional mandates.

Costs and Benefits

Costs

While DOT is unable to quantify all the economic costs and benefits of the IFR, the Department has identified both qualitative and quantitative impacts. Several provisions may lead to increased or decreased burdens for applicants, certifying agencies, and recipients related to transitional documentation requirements, the degree of technical rigor in disparity studies, and changes in program reporting. The magnitude of these costs and benefits would depend on the scope of the change; the likelihood of behavior adjustment; and potential legal, administrative, or programmatic effects.

Unquantified Costs

Key provisions of the IFR and their related cost impacts include:

- *Removal of race- and sex-based presumptions.* This provision eliminates presumptive eligibility based on race or sex and requires applicants to submit individualized evidence of social disadvantage, alongside the remaining required showing of economic disadvantage. Although the underlying economic disadvantage documentation (e.g., Personal Net Worth, income verification) was already a component of many applications, the shift to a required narrative or case-specific justification for all applications, as opposed to just those that did not meet the presumption of eligibility, may introduce additional procedural burdens and time costs on some applicants. This may increase the complexity of preparing applications and even potentially deter participation among some eligible small businesses, especially those with limited administrative capacity or legal support. This may also implicate reliance interests for businesses that were previously certified based on presumptive eligibility. However, many eligible small businesses will continue efforts at applying for certification and assume the additional burden to apply because of the benefits to being certified and the potential opportunity it brings outweighs the added burden of the application process. All eligible businesses may apply for and potentially obtain certification under the new certification process, which mitigates any impact on reliance interests. In addition, businesses'

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reliance interests do not justify continuing to implement presumptions that DOT and DOJ have determined are unconstitutional.

- *Certification burden.* As the burden of production and persuasion shifts away from certifying officials to individual applicants, certifying agencies may experience increased numbers of intake inquiries and clarification requests as applicants navigate the new social disadvantage requirements, or face inconsistent application quality, especially during the transition period. This would require certifying agencies to spend time following up with applicants and guiding them through the application as they go through the re-certification process, which implicates certifying agencies' reliance interests. In the short-term, the increase in workload and support services on certifying agencies may temporarily elevate the demands on the recipients' staff demands or delay determinations, which could at least partially offset any cost savings from shifting this burden to applicants. However, in the long run, it is expected that after the initial review of each applicant, subsequent reviews of applicants will require minimal agency time and will not implicate agencies' reliance interests.

- *Reevaluation of all affected DBEs/ACDBEs.* DBE/ACDBE participants who have previously qualified based in whole or in part on their race or sex will incur additional costs to develop and provide the individualized narrative required by the IFR. In addition, all firms will temporarily lose certifications until the reevaluation process is complete, and some firms may lose the certifications that currently lead to opportunities for them to participate, potentially leading to a loss of business opportunities and implicating firms' reliance interests (though this would be offset by other firms who face increased access to the same opportunities). Additional administrative burdens will also fall on certifiers (UCPs) performing the reevaluations. This could also lead to delays in goal setting and program participation, resulting from the temporary pause in counting DBE participation while the reevaluation process is underway.

- *Clarified disparity study expectations.* The rule requires that disparity studies include detailed capacity analyses, which may necessitate additional economic modeling, data collection, and expert analysis beyond what is standard practice in many jurisdictions. These requirements could increase costs,

particularly for large or multi-jurisdictional studies. While such studies are episodic rather than annual, the enhanced methodology could impose non-trivial compliance costs when undertaken.

- *Elimination of race/sex reporting in bidder lists.* The removal of demographic fields from bidder list reporting will reduce the administrative burden of data entry for participants and recipients, though the cost impact would likely be negligible.

- *Terminology changes and redefinitions.* These changes update program language to reflect constitutional terminology but do not alter administrative procedures or eligibility. The impact is purely semantic and is not expected to have any material cost impacts.

Quantified Costs: Information Collection Burden (Paperwork Reduction Act)

In addition to the above qualitative costs, the Department has quantified a portion of the expected compliance burdens as part of its Paperwork Reduction Act (PRA) package of the rule. These burdens represent the time and resources required to prepare, submit, and review program-related information.

Requirement	Estimated cost burden	Timing
Certification narratives (firms)	\$91.9 million	One-time.
UCP reevaluations	\$3.4 million	One-time.
Interstate certification	\$0.46 million	One-time.
Bidders' list reporting	\$1.24 million	Annual.
ACDBE annual report	\$0.58 million	Annual.
Goal setting (disparity studies)	\$0.46 million (annual cost)	Every three years.

These figures reflect fully loaded labor costs consistent with the Bureau of Labor Statistics data and DOT's standard methodology. One-time burdens primarily reflect transaction costs related to individualized certification requirements, while recurring burdens are associated with ongoing reporting and program administration. Overall, the IFR's primary quantified costs are transitional and one-time, totaling approximately \$95 million, with recurring annualized burdens of about \$1.8 million.

Benefits

With respect to benefits, the IFR will enhance constitutional compliance and reduce risks associated with constitutional litigation. It may also improve public trust by reinforcing fairness in eligibility determinations, which, although not easily quantifiable,

represent important benefits from improved program integrity.

B. Executive Order 14192 ("Unleashing Prosperity Through Deregulation")

This interim final rule is considered an E.O. 14219 deregulatory action because the unquantified cost-savings associated with constitutional compliance outweigh the quantified costs.

C. Executive Order 13132 ("Federalism")

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the rule satisfies the requirements of the Executive Order. While the rule may include provisions that impose substantial direct compliance costs on State and local governments, the Department has determined that

consultation with State and local governments prior to promulgation of the rule is not practicable given the urgent need to cure constitutional infirmities with the existing DBE and ACDBE regulations. These changes are required not by statute, but to ensure that the DBE and ACDBE programs do not violate the U.S. Constitution. We seek comment from State and local governments on these burdens during the comment period for this IFR.

D. Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments")

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal

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governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not result in annual State expenditures exceeding the minimum threshold. The Department has determined that the requirements of the Title II of the Unfunded Mandates Reform Act of 1995 therefore do not apply to this rulemaking.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D, available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts>. Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department's DBE and ACDBE regulations. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . ." 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104-13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.

This IFR modifies existing collection instruments in both parts 23 and 26. The following is a description of the sections that contain new and modified information collection requirements, along with the estimated hours and cost to fulfill them.

For purposes of estimating the cost burden on recipients, the State government wage rate was taken from the Bureau of Labor and Statistics (BLS) estimate of median wages for employees in the category of "Eligibility Interviewer in Government Programs" (OEWS Designation 43-4061). For the purpose of calculating loaded wage rates, these burden estimates assume wages represent 61.9 percent of total compensation, which is consistent with similar loaded wage rate estimates identified by BLS and used by DOT for related purposes. Because wages represent 61.9 percent of total compensation, the appropriate cost multiplier is 1.62 (1/0.619). Accordingly, the wage rate (\$25.95) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$42.04 to account for the cost of employer-provided benefits.

For purposes of estimating the cost burden on applicant and certified DBE/ACDBE firms, the wage rate was taken from the BLS estimate of median wages for individuals in the category of "Cross-industry, Private Ownership Only" (OEWS Designation 00-0001). Using the same loaded wage rate identified above, the wage rate for DBE/

ACDBE applicant firms (\$69.20) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$112.10 to account for the cost of employer-provided benefits. The Department emphasizes that many of these hour and cost burdens are one-time burdens as a result of the change in the DBE certification eligibility requirements. After the initial transition to the new requirements, increases in annual burdens will be modest. For DOT recipients, reporting burdens are expected to decrease as a result of reduced DBE/ACDBE reporting requirements.

i. Reapplication Review for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

To satisfy the social and economic disadvantage (SED) requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated persons who did not face barriers in obtaining terms.

The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

The owner must attach to the PN a current personal net worth (PNW) statement and any other financial information the owner considers relevant. The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2,000 hours. The total annual cost burden was calculated based on one stakeholder response of \$80,000.

In preparing this estimate, DOT estimated a 10 percent decrease in the number of currently certified firms who will submit documentation to maintain their DBE/ACDBE decertification status. DOT also assumed a 50 percent reduction in the total burden hours compared to the pre-existing estimated burden for completing the full Uniform Certification Application (UCA), as firms will be able to use many of their other existing certification documents for resubmission.

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Respondents: Firms seeking to maintain their DBE/ACDBE certification.

Estimated Number of Respondents: 41,000.

Frequency: One time per respondent.
Total Annual Burden Hours: 820,000 (one-time burden).

Total Annual Cost Burden: \$91,922,000 (one-time burden).

ii. Unified Certification Program (UCP)
Reevaluation of Applications for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

UCPs will need to reevaluate DBE/ACDBE applicant firms based on updated submission of application materials, including the PN and PNW statement. This estimate assumes an average burden of two hours to complete a review and make a disposition for each DBE/ACDBE certification application, including notifications to other jurisdictions.

Respondents: UCPs.

Estimated Number of Respondents: 53.

Frequency: One-time reevaluation of 41,000 applicant firms.

Total Annual Burden Hours: 82,000 (one-time burden).

Total Annual Cost Burden: \$3,447,280 (one-time cost).

iii. Maintaining and Updating Bidders' Lists

We estimate that recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: FAA, FHWA, and FTA funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: 3 times per year.

Total Annual Burden Hours: 29,502.

Total Annual Cost Burden:

\$1,240,264.

iv. ACDBE Annual Report of Percentages of ACDBEs in Various Categories

We estimate that FAA airport recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: State Departments of Transportation, District of Columbia, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: 53.

Frequency: Once per year.
Total Annual Burden Hours: 13,780.
Total Annual Cost Burden: \$579,311.

v. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

The Department estimates a modest increase in burden for setting overall DBE goals as a result of the transition to the new DBE certification requirements and enhanced expectations related to disparity studies used in setting overall goals. These changes may result in increases in the amount of time for recipients to set goals based on the relative availability of certified DBEs.

Respondents: DOT funding recipients.
Estimated Number of Respondents:

1,639.

Frequency: Once every three years.

Total Annual Burden Hours: 10,927.

Total Annual Cost Burden: \$459,371.

vi. Providing Evidence of Certification to an Additional State When a Firm Certified in Its Home State Applies to Another State for Certification (Interstate Certification)

The Department estimates a one-time increase in the burden for firms to provide evidence of certification to an additional State when a firm certified in its home State applies to another State for certification.

Respondents: DBE/ACDBE firms applying for interstate certification.

Estimated Number of Respondents: 4,100.

Frequency: Once.

Total Annual Burden Hours: 4,100.

Total Annual Cost Burden: \$459,610 (one-time cost).

As noted in the Costs and Benefits section of this analysis, these burden hour and cost estimates have been incorporated into the Department's overall assessment of regulatory costs.

Notwithstanding any other provision of law, no person is required to respond to a collection of information unless that collection displays a valid OMB control number.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DOT will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Sean P. Duffy,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Amend § 23.1 by revising paragraph (c) to read as follows:

§ 23.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's ACDBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 3. Amend § 23.3 as follows:

■ a. Add definitions for ACDBE-conscious and ACDBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The additions and revisions read as follows:

§ 23.3 What do the terms used in this part mean?

ACDBE-conscious measure or program is one that is focused specifically on assisting only ACDBEs.

ACDBE-neutral measure or program is one that is, or can be, used to assist all small business concerns.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically

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disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, applicants may qualify as socially and economically disadvantaged only if they can meet the relevant criteria described in § 26.67.

* * * * *

- 4. Amend § 23.25 as follows:
 - a. Revise the introductory text of paragraphs (d) and (e); and
 - b. Add paragraph (h).

The revisions read as follows:

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

* * * * *

(d) Your ACDBE program must include ACDBE-neutral measures that you will take. You must maximize the use of ACDBE-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of ACDBE-neutral measures you can implement:

* * * * *

(e) Your ACDBE program must also provide for the use of ACDBE-conscious measures when ACDBE-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of ACDBE-conscious measures you can implement:

* * * * *

(h) Effective October 3, 2025, you may not use any of the measures described in paragraph (e) of this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 5. Amend § 23.26 by revising paragraphs (b) introductory text, (b)(1), (d)(5), and (e) to read as follows:

§ 23.26 Fostering small business participation.

* * * * *

(b) This element must be submitted to the FAA for approval as a part of your ACDBE program. As part of this program element, you may include, but are not limited to including, the following strategies:

(1) Establish an ACDBE-neutral small business set-aside for certain concession opportunities. Such a strategy would include the rationale for selecting small

business set-aside concession opportunities that may include consideration of size and availability of small businesses to operate the concession.

* * * * *

(d) * * *

(5) You will take aggressive steps to encourage those socially and economically disadvantaged firms eligible for ACDBE certification to become certified; and

* * * * *

(e) A State, local, or other program, in which eligibility requires satisfaction of race, sex, or other criteria in addition to business size, may not be used to comply with the requirements of this part.

* * * * *

§ 23.27 [Amended]

- 6. Amend § 23.27 as follows:
 - a. Remove paragraph (c)(2)(iv);
 - b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;
 - c. Remove paragraph (d)(1);
 - d. Redesignate subparagraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and
 - e. Remove paragraphs (d)(5) and (d)(6).
- 7. Amend § 23.41 by revising paragraph (d) to read as follows:

§ 23.41 What is the basic overall goal requirement for recipients?

* * * * *

(d) Effective October 3, 2025, you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 23.81.

* * * * *

■ 8. Amend § 23.43 by revising paragraph (b) to read as follows:

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

* * * * *

(b) Stakeholders with whom you must consult include, but are not limited to, business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and the recipient's efforts to increase participation of ACDBEs.

* * * * *

- 9. Amend § 23.45 by revising paragraphs (f), (g), and (h) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

* * * * *

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of ACDBE-neutral and ACDBE-conscious means, respectively, and the basis for making this projection (see § 23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your ACDBE-neutral/ACDBE-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (i.e., the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or ACDBE-neutral/ACDBE-conscious "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding.

* * * * *

- 10. Amend § 23.51 as follows:
 - a. Revise the introductory text of paragraph (a);
 - b. Revise paragraph (a)(2);
 - c. Revise paragraph (c)(3); and
 - d. Revise paragraph (d)(5).

The revisions read as follows:

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47 through 23.49 that would be performed by ACDBEs in the absence of social and economic disadvantage and its effects.

* * * * *

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have been impacted by social and economic disadvantage in connection with concession opportunities or related business opportunities.

* * * * *

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must

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provide a detailed capacity analysis, including the methodology used.

* * * *

(d) *

(5) Among the information you submit with your overall goal (see § 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through ACDBE-neutral and ACDBE-conscious measures, respectively (see §§ 26.51(c) of this chapter).

* * * *

■ 11. Amend § 23.53 by adding paragraph (g) to read as follows:

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

* * * *

(g) Effective October 3, 2025, you as a car rental company may not count any ACDBE participation toward the goal that an airport has set for you until the UCP covering that airport has completed the reevaluation process described in part 26, § 23.81

■ 12. Amend § 23.55 by adding paragraph (m) to read as follows:

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

* * * *

(m) Effective October 3, 2025, you may not count any ACDBE participation toward ACDBE goals until the UCP covering you has completed the reevaluation process described in § 23.81.

■ 13. Amend § 23.57 as follows:

■ a. Revise paragraphs (b)(4) and (c); and

■ b. Add paragraph (d).

The revision and addition read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * *

(b) *

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your ACDBE-

neutral/ACDBE-conscious split, or the introduction of additional ACDBE-neutral or ACDBE-conscious measures.

* * * *

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your ACDBE-conscious/ACDBE-neutral split or introducing additional ACDBE-neutral or ACDBE-conscious measures for the remainder of the fiscal year.

(d) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 14. Add § 23.81 to subpart E to read as follows:

§ 23.81 ACDBE reevaluation process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified ACDBE;

(2) Provide each firm identified pursuant to paragraph (a)(1) of this section with the opportunity to submit documentation demonstrating its ACDBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to paragraph (a)(1) of this section meets the ACDBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this chapter shall not apply to any action taken pursuant to paragraph (a) of this section.

(c) Each UCP must reevaluate each firm identified pursuant to paragraph (a)(1) of this section as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 15. The authority for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312,

1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 16. Amend § 26.1 by revising paragraph (c) to read as follows:

§ 26.1 What are the objectives of this part?

* * * *

(c) To ensure that the Department's DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * *

■ 17. Amend § 26.5 as follows:

- a. Add definitions for DBE-conscious and DBE-neutral in alphabetical order;
- b. Remove the definitions of Race-conscious and Race-neutral; and
- c. Revise the definition of Socially and economically disadvantaged individual.

The addition and revision read as follows:

§ 26.5 Definitions.

* * * *

DBE-conscious measure or program is one that is focused specifically on assisting only DBEs.

DBE-neutral measure or program is one that is, or can be, used to assist all small businesses.

* * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can meet the relevant criteria described in § 26.67. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

* * * *

§ 26.11 [Amended]

■ 18. Amend § 26.11 as follows:

- a. Remove paragraph (c)(2)(iv);
- b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as subparagraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;
- c. Remove paragraph (e)(1);
- d. Redesignate paragraphs (e)(2), (e)(3), and (e)(4) as paragraphs (e)(1), (e)(2), and (e)(3), respectively; and
- e. Remove paragraphs (e)(5) and (e)(6).

■ 19. Amend § 26.37 by revising paragraph (b) to read as follows:

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§ 26.37 What are a recipient's responsibilities for monitoring?

* * * * *

(b) A recipient's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed, or in the case of DBE-neutral participation, the work subcontracted, to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of § 26.55. This mechanism must include a written verification that you have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. The monitoring to which this paragraph (b) refers may be conducted in conjunction with monitoring of contract performance for other purposes such as a commercially useful function review.

* * * * *

■ 20. Amend § 26.39 by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 26.39 Fostering small business participation.

* * * * *

(b) * * *

(1) Establishing a DBE-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

* * * * *

(5) To meet the portion of your overall goal you project to meet through DBE-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

* * * * *

■ 21. Amend § 26.45 as follows:

- a. Revise paragraph (a)(2);
- b. Revise paragraph (b);
- c. Revise paragraph (c)(3);
- d. Revise paragraph (d)(1)(ii);
- e. Revise paragraph (d)(3);
- f. Revise paragraph (f)(3);
- g. Revise paragraph (g)(1); and
- h. Revise paragraph (h);

The revisions read as follows:

§ 26.45 How do recipients set overall goals?

(a) * * *

(2) If you are an FTA Tier II recipient who intends to operate a DBE-neutral program, or if you are an FAA recipient who reasonably anticipates awarding \$250,000 or less in FAA prime contract funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage. You cannot simply rely on either the 10 percent national goal, your previous overall goal, or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(1) * * *

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure. To the extent that the disparity study provides a detailed capacity analysis, include the methodology used;

* * * * *

(3) If you attempt to make an adjustment to your base figure to account for the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

* * * * *

(f) * * *

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through DBE-neutral and DBE-conscious measures, respectively (see § 26.51(c)).

* * * * *

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official internet website and may be posted in any other sources (e.g., trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official internet website.

* * * * *

(h) Effective October 3, 2025 you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 22. Amend § 26.47 as follows:

- a. Revise paragraph (c)(4);
- b. Revise paragraph (d); and
- c. Add paragraph (e).

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) * * *

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your DBE-conscious/DBE-neutral split, or the introduction of additional DBE-neutral or DBE-conscious measures.

* * * * *

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current

trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your DBE-conscious/DBE-neutral or introducing additional DBE-neutral or DBE-conscious measures for the remainder of the fiscal year.

(e) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 26.111.

- 23. Amend § 26.51 as follows:
- a. Revise paragraph (a);
- b. Revise the introductory text to paragraph (b);
- c. Revise paragraph (c);
- d. Revise paragraph (d);
- e. Revise paragraph (e)(2);
- f. Revise paragraph (f);
- g. Revise paragraph (g); and
- h. Add paragraph (h).

The revisions read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using DBE-neutral means of facilitating DBE-neutral participation. DBE-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) DBE-neutral means include, but are not limited to, the following:

* * * * *

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through DBE-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using DBE-neutral means.

* * * * *

(e) * * *

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work

involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of DBE-neutral means.

* * * * *

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of social and economic disadvantage, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through DBE-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example 1 to paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through DBE-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I. However, if part way through Year I, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year I, you could begin setting DBE-conscious contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of DBE-neutral or DBE-conscious measures to allow you to meet the overall goal.

Example 2 to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of DBE-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your

participation for the year is likely to be only 8 percent total, then you would increase your use of DBE-neutral or DBE-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by DBE-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only DBE-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example 3 to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through DBE-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using DBE-neutral means. You simply use DBE-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) of this section projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years using contract goals (i.e., not through DBE-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example 4 to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) of this section projection estimates that you will obtain 4 percent DBE participation through DBE-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

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(g) In any year in which you project meeting part of your goal through DBE-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.111.

(h) Effective October 3, 2025, you may not set any contract goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 24. Amend § 26.55 by adding paragraph (i) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(i) Effective October 3, 2025, you may not count any DBE participation toward DBE goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 25. Amend § 26.61 by revising paragraph (b) to read as follows:

§ 26.61 Burden of proof.

* * * * *

(b) The firm has the burden of demonstrating, by a preponderance of the evidence, *i.e.*, more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, the certifier must consider all the information in the record, viewed as a whole. In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

■ 26. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including

obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

■ 27. Add § 26.111 to subpart F to read as follows:

§ 26.111 DBE Reevaluation Process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified DBE;

(2) Provide each firm identified pursuant to subparagraph (a)(1) with the opportunity to submit documentation demonstrating its DBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to subparagraph (a)(1) meets the DBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this part shall not apply to any action taken pursuant to paragraph (a).

(c) Each UCP must reevaluate each firm identified pursuant to subparagraph (a)(1) as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

[FR Doc. 2025-19460 Filed 10-2-25; 8:45 am]

BILLING CODE 4910-9X-P

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 2 to the Fishery Management Plans (FMPs) for Puerto Rico, St. Croix, St. Thomas and St. John FMP (Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). This final rule prohibits and restricts the use of certain net gear in U.S. Caribbean Federal waters and requires a descending device to be available and ready for use on vessels when fishing for federally managed reef fish species in U.S. Caribbean Federal waters. The purpose of this final rule and Amendment 2 is to protect habitats and species from the potential negative impacts associated with the use of certain net gear and to enhance the survival of released reef fish in U.S. Caribbean Federal waters.

DATES: This final rule is effective November 3, 2025, except for the revisions for §§ 622.437(a)(4), 622.477(a)(4), and 622.512(a)(4), which are effective April 1, 2026.

ADDRESSES: Electronic copies of Amendment 2, which includes a fishery impact statement, an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-2-puerto-rico-st-croix-and-st-thomas-and-st-john-fishery-management-plans-trawl>.

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, NMFS Southeast Regional Office, 727-824-5305, maria.lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS, with the advice of the Council, manages the Puerto Rico, St. Croix, and St. Thomas and St. John fisheries in U.S. Caribbean Federal waters under the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs. The Council prepared the FMPs, which the Secretary of Commerce approved, and NMFS implements the FMPs through regulations at 50 CFR parts 600 and 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 27, 2024, NMFS published a notice of availability for Amendment 2 and requested public comment (89 FR 68572). On September 30, 2024, NMFS published a proposed rule for Amendment 2 and requested public comment (89 FR 79492). NMFS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 250915-0853]

RIN 0648-BM94

Fisheries of the Caribbean, Gulf of America, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Replace section 6-1.04 with:

BUY AMERICA (Required Federal Language)

6-1.04 BUY AMERICA

6-1.04A General

Buy America Requirements apply to iron or steel, manufactured products, and construction materials permanently incorporated into the project.

Buy America requirements do not apply to the following:

1. Tools and construction equipment used in performing the work
2. Temporary work that is not incorporated into the finished project

An article, materials, or supply to be permanently incorporated in the project should only be classified into one of the following categories:

1. Iron or steel products
2. Manufactured products
3. Construction materials
4. Excluded materials

Excluded materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

6-1.04B Iron or Steel Products

All iron or steel products permanently incorporated into the project must be melted and manufactured in the United States except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials produced outside the United States does not exceed the greater of 0.1 percent of the total contract amount or \$2,500, materials produced outside the United States may be used if authorized.

Iron or steel products are defined as articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

For a product to be considered to consist predominantly of iron or steel, or a combination of both means the cost of the iron or steel content of the product exceeds 50 percent of the total cost of all its components. The cost of iron or steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

Furnish iron or steel products to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the iron or steel were melted and manufactured. All melting and manufacturing processes for these materials, including an

application of a coating, must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied.

[Delete the paragraph below if not applicable]

The following iron or steel products have received an approved Buy America waiver for this project and are therefore not subject to Buy America requirements:

1. _____.
2. _____.

6-1.04C Manufactured Products

All manufactured products permanently incorporated into the project must be manufactured in the United States. Manufactured products are defined as articles, materials, or supplies that have been:

1. Processed into a specific form and shape; or
2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

Manufacturer, in the case of manufactured products, means the entity that performs the final manufacturing process by bringing individual elements together that produces a manufactured product.

If an item is classified as an iron or steel product, a construction material, or an excluded material, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, construction materials, or excluded materials.

Iron or steel used in precast concrete manufactured products or Intelligent Transportation Systems (ITS) must meet the requirements of Iron or Steel Products regardless of the amount used.

Iron and steel used in other manufactured products must meet the requirements of section Iron or Steel Products if the cost of steel and iron components is 50 percent or more of the total cost of the manufactured product.

Furnish manufactured products to be permanently incorporated into the work with certificates of compliance with each project delivery. The manufacturer's certificate of compliance must identify where the manufacturing occurred and attest specifically to Buy America compliance.

[Delete the paragraph below if not applicable]

The following manufactured products have received an approved Buy America waiver for this project and are therefore not subject to Buy America requirements:

1. _____.
2. _____.

6-1.04D Construction Materials

Construction materials permanently incorporated into the project must be manufactured as defined in 2 CFR 184.6 in the United States.

Buy America requirements apply to the following construction materials that are or consist primarily of:

1. Non-ferrous metals
2. Plastic and polymer-based products such as:
 - 2.1. Polyvinylchloride
 - 2.2. Composite Building Materials
3. Glass
4. Fiber optic cable (including drop cable)
5. Optical fiber
6. Lumber
7. Engineered wood
8. Drywall

Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.

Furnish construction materials to be incorporated into the work with certificates of compliance with each project delivery. The manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to Buy America compliance.

[Delete the paragraph below if not applicable]

The following construction materials have received an approved Buy America waiver for this project and are therefore not subject to Buy America requirements:

1. _____.
2. _____.

6-1.04E Buy America Waiver for De Minimis Cost for Manufactured Products and Construction Materials

A De Minimis Cost Waiver can waive the application of FHWA's Buy America requirements for manufactured products and construction materials under a single project when the total value of non-compliant manufactured products and construction materials is no more than the lesser of \$1,000,000 or 5 percent of the total applicable material costs for the project.

The percent threshold is calculated based on the following formula:

$$X = NC / TA$$

where:

X = percent threshold

NC =total value of non-compliant manufactured products and construction material

TA =total applicable project costs (iron or steel products, manufactured products, and construction materials; does not include excluded materials)

This threshold is based on the actual cost of the iron or steel products, manufactured products, and construction materials, not the anticipated cost of those materials. Compliant and non-compliant Agency Furnished Materials for the project must be accounted for in a De Minimis Cost Waiver Worksheet calculation, if provided by the Local Agency.

Provide copies of invoices for the actual costs of materials including transportation to the project site.

In applying a De Minimum Cost Waiver, total cost of non-compliant construction materials and manufactured products does not include the cost of any products subject to a separate Buy America waiver.

If De Minimis Cost Waiver Worksheet calculation for materials subject to Buy America is not submitted, the Local Agency may:

1. Withhold from the next progress payment
2. Reject your request for a De Minimis Costs waiver for non-compliant construction materials or manufactured products

REVISED BID FORM (EXHIBIT A)
STORM DAMAGE REPAIR ON PALMER BOULEVARD
(3H065) PM 0.33
FEDERAL PROJECT NO.: FEMA-4434-DR-CA PW-208
CONTRACT NO.: 219311

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	100100	DEVELOP WATER SUPPLY	LS	1		
2	120090	CONSTRUCTION AREA SIGNS	EA	10		
3	120100	TRAFFIC CONTROL SYSTEM	LS	1		
4	120165	CHANNELIZER (SURFACE MOUNTED)	EA	8		
5	129000	TEMPORARY RAILING (TYPE K)	LF	280		
6	129105	TEMPORARY CRASH CUSHION TL-2	EA	2		
7	130100	JOB SITE MANAGEMENT	LS	1		
8	130201	WATER POLLUTION CONTROL PROGRAM	LS	1		
9	130610	TEMPORARY CHECK DAM	LF	10		
10	130670	TEMPORARY REINFORCED SILT FENCE	LF	210		
11	130710	TEMPORARY CONSTRUCTION ENTRANCE	EA	1		
12	170103	CLEARING AND GRUBBING	LS	1		
13	190101	ROADWAY EXCAVATION	CY	86		
14	192049	F STRUCTURE EXCAVATION (SOLDIER PILE WALL)	CY	27		
15	193029	F STRUCTURE BACKFILL (SOLDIER PILE WALL)	CY	14		
16	193116	F CONCRETE BACKFILL (SOLDIER PILE WALL)	CY	36		
17	193119	F LEAN CONCRETE BACKFILL	CY	16		
18	210212	DRY SEED	SF	2217		
19	210350	FIBER ROLL	LF	350		
20	210420	STRAW	SF	2217		
21	260203	CLASS 2 AGGREGATE BASE	CY	54		
22	390132	HOT MIX ASPHALT (TYPE A)	TON	33		
23	394073	PLACE HOT MIX ASPHALT DIKE (TYPE A)	LF	90		
24	490333	P STEEL SOLDIER PILE (W 18 X 130)	LF	308		
25	490403	30" DRILLED HOLE	LF	295		
26	575004	F TIMBER LAGGING	MFBM	5		
27	590120	CLEAN AND PAINT STEEL SOLDIER PILING	LS	1		
28	680902	6" PERFORATED PLASTIC PIPE UNDERDRAIN	LF	75		
29	680902(A)	6" PERFORATED PLASTIC PIPE UNDERDRAIN (WALL DRAIN)	LF	64		
30	680903	6" NON-PERFORATED PLASTIC PIPE UNDERDRAIN	LF	35		
31	680903(A)	6" NON-PERFORATED PLASTIC PIPE UNDERDRAIN (WALL DRAIN)	LF	14		
32	723095	ROCK SLOPE PROTECTION (20 lb, Class I, METHOD B) (CY)	CY	2		
33	780230	SURVEY MONUMENT (TYPE D)	EA	1		
34	832006	MIDWEST GUARDRAIL SYSTEM (STEEL POST)	LF	87.5		
35	832070	VEGETATION CONTROL (MINOR CONCRETE)	SY	65		

ATTACHMENT 3

Attachment 2

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
36	839521	F CABLE RAILING	LF	64		
37	839580	END ANCHOR ASSEMBLY (TYPE SFT-M)	EA	1		
38	839584	ALTERNATIVE IN-LINE TERMINAL SYSTEM	EA	1		
39	999990	MOBILIZATION	LS	1		

NOTE: ITEM CODE LETTER DESIGNATION; F= FINAL PAY QUANTITY

BID TOTAL

(Bidder's Signature)

(Title)

Replace section 7-1.11B with: (2024 Caltrans SSP)

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

FHWA-1273 -- Revised October 23, 2023

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

ATTACHMENTS

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

I. GENERAL

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

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

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

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not

referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies

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

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

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

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

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

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

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

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

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

meetings will be conducted by the EEO Officer or other knowledgeable company official.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR

230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such

information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101.

Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the

views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding (29 CFR 5.5)

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

payment, advance, or guarantee of funds until such violations have ceased.

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

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

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform

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

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

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

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

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

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

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

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

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

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

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

3. Withholding for unpaid wages and liquidated damages

a. Withholding process. The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other

federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

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

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

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower- tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

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

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

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

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

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

VI. SUBLetting OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal- aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or

misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification

Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

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

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

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies

have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31

U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on

which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

Replace section 7-1.11C with: (2024 Caltrans SSP)

FEMALE AND MINORITY GOALS (Required Federal Language)

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000.

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

MINORITY UTILIZATION GOALS

	Economic Area	Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehema	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	12.3 24.3 19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA	19.1 26.1

	CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	11.9 28.3 21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	16.9 18.2

For the last full week of July during which work is performed under the contract, the prime contractor and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

Replace section 7-1.11D Training with:

FEDERAL TRAINEE PROGRAM (Required Federal Language)

For the Federal training program, the number of trainees or apprentices is **0 (zero)**.

This section applies if a number of trainees or apprentices is shown on the Notice to Bidders.

As part of the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the County of Humboldt:

1. Number of apprentices or trainees to be trained for each classification

2. Training program to be used
3. Training starting date for each classification

The prime contractor shall obtain the County of Humboldt approval for this submitted information before the prime contractor starts work. The County of Humboldt credits the prime contractor for each apprentice or trainee the prime contractor employs on the job who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeyman status. The prime contractor shall make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area and show that they have made the efforts. In making these efforts, the prime contractor shall not discriminate against any applicant for training.

The prime contractor shall not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

The prime contractor shall ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. The prime contractor's records must show the employee's answers to the questions.

In the training program, the prime contractor shall establish the minimum length and training type for each classification. The County of Humboldt and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - Meet your equal employment opportunity responsibilities
 - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

The prime contractor shall obtain the State's approval for their training program before they start work involving the classification covered by the program.

The prime contractor shall provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the

laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is an integral part of an approved training program and does not make up a significant part of the overall training.

The County of Humboldt reimburses the prime contractor 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and prime contractor does at least one of the following:
 - a. Contribute to the cost of the training
 - b. Provide the instruction to the apprentice or trainee
 - c. Pay the apprentice's or trainee's wages during the off-site training period
3. If the prime contractor complies with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee a:

1. Copy of the training plan approved by the U.S. Department of Labor or a training plan for trainees approved by both Caltrans and FHWA
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting contractor's performance under this section.

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"General Decision Number: CA20250004 09/26/2025

Superseded General Decision Number: CA20240004

State: California

Construction Types: Heavy (Heavy and Dredging) and Highway

Counties: Del Norte, Humboldt, Lake and Mendocino Counties in California.

DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); AND HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025
1	02/21/2025
2	02/28/2025
3	03/14/2025
4	07/04/2025
5	08/15/2025
6	08/22/2025
7	09/19/2025
8	09/26/2025

ASBE0016-005 01/01/2024

Rates Fringes

Asbestos Workers/Insulator
(Includes the application of all insulating materials, Protective Coverings, Coatings, and Finishes to all types of mechanical systems)

(1) Mendocino County.....\$ 64.56	25.07
(2) Del Norte, Humboldt, Lake Counties.....\$ 64.56	25.07

* ASBE0016-006 05/01/2025

Rates Fringes

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Asbestos Removal
worker/hazardous material
handler (Includes
preparation, wetting,
stripping, removal,
scrapping, vacuuming, bagging
and disposing of all
insulation materials from
mechanical systems, whether
they contain asbestos or not)....\$ 35.31 12.75

BRCA003-001 08/01/2024

Rates	Fringes
MARBLE FINISHER.....\$ 42.06	19.80

BRCA003-003 08/01/2024

Rates	Fringes
MARBLE MASON.....\$ 61.72	30.31

BRCA003-006 05/01/2024

Rates	Fringes
BRICKLAYER.....\$ 57.02	28.50

SPECIALTY PAY:

- (A) Underground work such as tunnel work, sewer work, manholes, catch basins, sewer pipes and telephone conduit shall be paid \$1.25 per hour above the regular rate. Work in direct contact with raw sewage shall receive \$1.25 per hour in addition to the above.
- (B) Operating a saw or grinder shall receive \$1.25 per hour above the regular rate.
- (C) Gunite nozzle person shall receive \$1.25 per hour above the regular rate.

BRCA003-008 07/01/2024

Rates	Fringes
TERRAZZO FINISHER.....\$ 44.93	20.98
TERRAZZO WORKER/SETTER.....\$ 60.58	29.79

BRCA003-013 04/01/2024

Rates	Fringes
TILE FINISHER	
Del Norte & Humboldt Counties.....\$ 37.75	19.28
Lake & Mendocino Counties...\$ 35.78	19.23
TILE LAYER	
Del Norte & Humboldt Counties.....\$ 59.92	22.62
Lake & Mendocino Counties...\$ 56.79	22.54

CARP0034-001 07/01/2021

Rates	Fringes
Diver	
Assistant Tender, ROV Tender/Technician.....\$ 54.10	34.69
Diver standby.....\$ 60.51	34.69
Diver Tender.....\$ 59.51	34.69
Diver wet.....\$ 103.62	34.69
Manifold Operator (mixed gas).....\$ 64.51	34.69
Manifold Operator (Standby).\$ 59.51	34.69

DEPTH PAY (Surface Diving):

050 to 100 ft	\$2.00 per foot
101 to 150 ft	\$3.00 per foot
151 to 220 ft	\$4.00 per foot
221 ft.-deeper	\$5.00 per foot

SATURATION DIVING:

The standby rate shall apply until saturation starts. The saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. The diver rate shall be paid for all saturation hours.

DIVING IN ENCLOSURES:

Where it is necessary for Divers to enter pipes or tunnels, or other enclosures where there is no vertical ascent, the following premium shall be paid: Distance traveled from entrance 26 feet to 300 feet: \$1.00 per foot. When it is necessary for a diver to enter any pipe, tunnel or other

enclosure less than 48" in height, the premium will be \$1.00 per foot.

WORK IN COMBINATION OF CLASSIFICATIONS:

Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

CARP0034-003 07/01/2021

	Rates	Fringes
Piledriver.....	\$ 54.10	34.69

CARP0751-002 07/01/2021

Del Norte, Humboldt, Lake and Mendocino Counties

	Rates	Fringes
Carpenters		
Bridge Builder/Highway		
Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer,		
Shingler, Power Saw		
Operator, Steel Scaffold &		
Steel Shoring Erector, Saw		
Filer.....	\$ 47.77	31.49
J Journeyman Carpenter.....	\$ 47.62	31.49
Millwright.....	\$ 50.12	33.08

ELEC0551-001 06/01/2024

LAKE AND MENDOCINO COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 59.17	32.04

TUNNEL WORK: Add \$0.50 per hour.

ELEC0551-002 06/01/2024

DEL NORTE AND HUMBOLDT COUNTIES

	Rates	Fringes
Electricians:.....	\$ 59.17	32.04

TUNNEL WORK: Add \$0.50 per hour.

ELEC1245-002 01/01/2025

HUMBOLDT, LAKE AND MENDOCINO COUNTIES

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 70.16	24.71
(2) Equipment specialist		
(operates crawler		
tractors, commercial motor		
vehicles, backhoes,		
trenchers, cranes (50 tons		
and below), overhead &		
underground distribution		
line equipment).....	\$ 53.30	22.26
(3) Groundman.....	\$ 40.76	21.76
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

ENGI0003-014 06/30/2025

""AREA 1"" WAGE RATES ARE LISTED BELOW

""AREA 2"" RECEIVES AN ADDITIONAL \$2.00 PER HOUR ABOVE AREA 1 RATES.

SEE AREA DEFINITIONS BELOW

	Rates	Fringes
OPERATOR: Power Equipment		
(AREA 1:)		
GROUP 1.....	\$ 66.96	32.53
GROUP 2.....	\$ 65.43	32.53
GROUP 3.....	\$ 63.95	32.53

GROUP 4.....	\$ 62.57	32.53
GROUP 5.....	\$ 61.30	32.53
GROUP 6.....	\$ 59.98	32.53
GROUP 7.....	\$ 58.84	32.53
GROUP 8.....	\$ 57.70	32.53
GROUP 8-A.....	\$ 55.49	32.53

OPERATOR: Power Equipment

(Cranes and Attachments -

AREA 1:)

GROUP 1

Cranes.....	\$ 68.59	32.53
Oiler.....	\$ 43.79	31.15
Truck crane oiler.....	\$ 46.08	31.15

GROUP 2

Cranes.....	\$ 66.08	32.53
Oiler.....	\$ 42.83	31.15
Truck crane oiler.....	\$ 45.07	31.15

GROUP 3

Cranes.....	\$ 64.34	32.53
Hydraulic.....	\$ 44.44	31.15
Oiler.....	\$ 42.55	31.15
Truck crane oiler.....	\$ 44.83	31.15

GROUP 4

Cranes.....	\$ 61.30	32.53
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OPERATOR: Power Equipment

(Piledriving - AREA 1:)

GROUP 1

Lifting devices.....	\$ 52.64	31.15
Oiler.....	\$ 43.38	31.15
Truck Crane Oiler.....	\$ 45.66	31.15

GROUP 2

Lifting devices.....	\$ 50.82	31.15
Oiler.....	\$ 43.11	31.15
Truck Crane Oiler.....	\$ 45.41	31.15

GROUP 3

Lifting devices.....	\$ 49.14	31.15
Oiler.....	\$ 42.89	31.15
Truck Crane Oiler.....	\$ 45.12	31.15

GROUP 4

Lifting devices.....	\$ 47.37	31.15
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GROUP 5

Lifting devices.....	\$ 44.73	31.15
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GROUP 6

Lifting devices.....	\$ 42.50	31.15
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OPERATOR: Power Equipment

(Steel Erection - AREA 1:)

GROUP 1

Cranes.....	\$ 68.81	32.53
Oiler.....	\$ 43.72	31.15
Truck Crane Oiler.....	\$ 45.95	31.15

GROUP 2

Cranes.....	\$ 67.04	32.53
Oiler.....	\$ 43.45	31.15
Truck Crane Oiler.....	\$ 45.73	31.15

GROUP 3

Cranes.....	\$ 65.56	32.53
Hydraulic.....	\$ 60.61	32.53
Oiler.....	\$ 43.23	31.15
Truck Crane Oiler.....	\$ 45.46	31.15

GROUP 4

Cranes.....	\$ 63.54	32.53
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GROUP 5

Cranes.....	\$ 62.24	32.53
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OPERATOR: Power Equipment

(Tunnel and Underground Work

- AREA 1:)

SHAFTS, STOPIES, RAISES:

GROUP 1.....	\$ 63.06	32.53
GROUP 1-A.....	\$ 65.53	32.53
GROUP 2.....	\$ 61.80	32.53
GROUP 3.....	\$ 60.47	32.53
GROUP 4.....	\$ 59.33	32.53
GROUP 5.....	\$ 58.19	32.53

UNDERGROUND:

GROUP 1.....	\$ 62.96	32.53
GROUP 1-A.....	\$ 65.43	32.53
GROUP 2.....	\$ 61.70	32.53
GROUP 3.....	\$ 60.37	32.53
GROUP 4.....	\$ 59.23	32.53
GROUP 5.....	\$ 58.09	32.53

FOOTNOTE: Work suspended by ropes or cables, or work on a
Yo-Yo Cat: \$.60 per hour additional.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Operator of helicopter (when used in erection work);
Hydraulic excavator, 7 cu. yds. and over; Power shovels,
over 7 cu. yds.

GROUP 2: Highline cableway; Hydraulic excavator, 3-1/2 cu.
yds. up to 7 cu. yds.; Licensed construction work boat
operator, on site; Power blade operator (finish); Power

shovels, over 1 cu. yd. up to and including 7 cu. yds.
m.r.c.

GROUP 3: Asphalt milling machine; Cable backhoe; Combination backhoe and loader over 3/4 cu. yds.; Continuous flight tie back machine assistant to engineer or mechanic; Crane mounted continuous flight tie back machine, tonnage to apply; Crane mounted drill attachment, tonnage to apply; Dozer, slope brd; Gradall; Hydraulic excavator, up to 3 1/2 cu. yds.; Loader 4 cu. yds. and over; Long reach excavator; Multiple engine scraper (when used as push pull); Power shovels, up to and including 1 cu. yd.; Pre-stress wire wrapping machine; Side boom cat, 572 or larger; Track loader 4 cu. yds. and over; Wheel excavator (up to and including 750 cu. yds. per hour)

GROUP 4: Asphalt plant engineer/box person; Chicago boom; Combination backhoe and loader up to and including 3/4 cu. yd.; Concrete batch plant (wet or dry); Dozer and/or push cat; Pull- type elevating loader; Gradesetter, grade checker (GPS, mechanical or otherwise); Grooving and grinding machine; Heading shield operator; Heavy-duty drilling equipment, Hughes, LDH, Watson 3000 or similar; Heavy-duty repairperson and/or welder; Lime spreader; Loader under 4 cu. yds.; Lubrication and service engineer (mobile and grease rack); Mechanical finishers or spreader machine (asphalt, Barber-Greene and similar); Miller Formless M-9000 slope paver or similar; Portable crushing and screening plants; Power blade support; Roller operator, asphalt; Rubber- tired scraper, self-loading (paddle-wheels, etc.); Rubber- tired earthmoving equipment (scrapers); Slip form paver (concrete); Small tractor with drag; Soil stabilizer (P & H or equal); Spider plow and spider puller; Tubex pile rig; Unlicensed construction work boat operator, on site; Timber skidder; Track loader up to 4 yds.; Tractor-drawn scraper; Tractor, compressor drill combination; Welder; Woods-Mixer (and other similar Pugmill equipment)

GROUP 5: Cast-in-place pipe laying machine; Combination slusher and motor operator; Concrete conveyor or concrete pump, truck or equipment mounted; Concrete conveyor, building site; Concrete pump or pumpcrete gun; Drilling equipment, Watson 2000, Texoma 700 or similar; Drilling and boring machinery, horizontal (not to apply to waterliners, wagon drills or jackhammers); Concrete mixer/all; Person and/or material hoist; Mechanical finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical burm, curb and/or curb and gutter machine, concrete or asphalt); Mine or shaft hoist; Portable crusher; Power jumbo operator (setting slip-forms, etc., in tunnels); Screed (automatic or manual); Self-propelled compactor with dozer; Tractor with boom D6 or smaller; Trenching machine, maximum digging capacity over 5 ft. depth; Vermeer T-600B rock cutter or similar

GROUP 6: Armor-Coater (or similar); Ballast jack tamper; Boom- type backfilling machine; Assistant plant engineer; Bridge and/or gantry crane; Chemical grouting machine, truck-mounted; Chip spreading machine operator; Concrete saw (self-propelled unit on streets, highways, airports and canals); Deck engineer; Drilling equipment Texoma 600, Hughes 200 Series or similar up to and including 30 ft. m.r.c.; Drill doctor; Helicopter radio operator; Hydro-hammer or similar; Line master; Skidsteer loader, Bobcat larger than 743 series or similar (with attachments); Locomotive; Lull hi-lift or similar; Oiler, truck mounted equipment; Pavement breaker, truck-mounted, with compressor combination; Paving fabric installation and/or laying machine; Pipe bending machine (pipelines only); Pipe wrapping machine (tractor propelled and supported); Scree (except asphaltic concrete paving); Self- propelled pipeline wrapping machine; Tractor; Self-loading chipper; Concrete barrier moving machine

GROUP 7: Ballast regulator; Boom truck or dual-purpose A-frame truck, non-rotating - under 15 tons; Cary lift or similar; Combination slurry mixer and/or cleaner; Drilling equipment, 20 ft. and under m.r.c.; Firetender (hot plant); Grouting machine operator; Highline cableway signalperson; Stationary belt loader (Kolman or similar); Lift slab machine (Vagborg and similar types); Maginnes internal full slab vibrator; Material hoist (1 drum); Mechanical trench shield; Pavement breaker with or without compressor combination; Pipe cleaning machine (tractor propelled and supported); Post driver; Roller (except asphalt); Chip Seal; Self-propelled automatically applied concrete curing machine (on streets, highways, airports and canals); Self-propelled compactor (without dozer); Signalperson; Slip-form pumps (lifting device for concrete forms); Tie spacer; Tower mobile; Trenching machine, maximum digging capacity up to and including 5 ft. depth; Truck- type loader

GROUP 8: Bit sharpener; Boiler tender; Box operator;

Brakeperson; Combination mixer and compressor (shotcrete/gunite); Compressor operator; Deckhand; Fire tender; Forklift (under 20 ft.); Generator; Gunite/shotcrete equipment operator; Hydraulic monitor; Ken seal machine (or similar); Mixermobile; Oiler; Pump operator; Refrigeration plant; Reservoir-debris tug (self-propelled floating); Ross Carrier (construction site); Rotomist operator; Self-propelled tape machine; Shuttlecar; Self-propelled power sweeper operator (includes vacuum sweeper); Slusher operator; Surface heater; Switchperson; Tar pot firetender; Tugger hoist, single drum; Vacuum cooling plant; Welding machine (powered other than by electricity)

GROUP 8-A: Elevator operator; Skidsteer loader-Bobcat 743 series or smaller, and similar (without attachments); Mini excavator under 25 H.P. (backhoe-trencher); Tub grinder wood chipper

ALL CRANES AND ATTACHMENTS

GROUP 1: Clamshell and dragline over 7 cu. yds.; Crane, over 100 tons; Derrick, over 100 tons; Derrick barge pedestal-mounted, over 100 tons; Self-propelled boom-type lifting device, over 100 tons

GROUP 2: Clamshell and dragline over 1 cu. yd. up to and including 7 cu. yds.; Crane, over 45 tons up to and including 100 tons; Derrick barge, 100 tons and under; Self-propelled boom-type lifting device, over 45 tons; Tower crane

GROUP 3: Clamshell and dragline up to and including 1 cu. yd.; Cranes 45 tons and under; Self-propelled boom-type lifting device 45 tons and under;

GROUP 4: Boom Truck or dual purpose A-frame truck, non-rotating over 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) over 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) - under 15 tons;

PILEDRIVERS

GROUP 1: Derrick barge pedestal mounted over 100 tons; Clamshell over 7 cu. yds.; Self-propelled boom-type lifting device over 100 tons; Truck crane or crawler, land or barge mounted over 100 tons

GROUP 2: Derrick barge pedestal mounted 45 tons to and including 100 tons; Clamshell up to and including 7 cu. yds.; Self-propelled boom-type lifting device over 45 tons; Truck crane or crawler, land or barge mounted, over 45 tons up to and including 100 tons; Fundex F-12 hydraulic pile rig

GROUP 3: Derrick barge pedestal mounted under 45 tons; Self-propelled boom-type lifting device 45 tons and under; Skid/scow piledriver, any tonnage; Truck crane or crawler, land or barge mounted 45 tons and under

GROUP 4: Assistant operator in lieu of assistant to engineer; Forklift, 10 tons and over; Heavy-duty repairperson/welder

GROUP 5: Deck engineer

GROUP 6: Deckhand; Fire tender

STEEL ERECTORS

GROUP 1: Crane over 100 tons; Derrick over 100 tons; Self-propelled boom-type lifting device over 100 tons

GROUP 2: Crane over 45 tons to 100 tons; Derrick under 100 tons; Self-propelled boom-type lifting device over 45 tons to 100 tons; Tower crane

GROUP 3: Crane, 45 tons and under; Self-propelled boom-type lifting device, 45 tons and under

GROUP 4: Chicago boom; Forklift, 10 tons and over; Heavy-duty repair person/welder

GROUP 5: Boom cat

TUNNEL AND UNDERGROUND WORK

GROUP 1-A: Tunnel bore machine operator, 20' diameter or more

GROUP 1: Heading shield operator; Heavy-duty repairperson; Mucking machine (rubber tired, rail or track type); Raised bore operator (tunnels); Tunnel mole bore operator

GROUP 2: Combination slusher and motor operator; Concrete pump or pumpcrete gun; Power jumbo operator

GROUP 3: Drill doctor; Mine or shaft hoist

GROUP 4: Combination slurry mixer cleaner; Grouting Machine operator; Motorman

GROUP 5: Bit Sharpener; Brakeman; Combination mixer and compressor (gunite); Compressor operator; Oiler; Pump operator; Slusher operator

AREA DESCRIPTIONS:

POWER EQUIPMENT OPERATORS, CRANES AND ATTACHMENTS, TUNNEL AND UNDERGROUND [These areas do not apply to Piledrivers and Steel Erectors]

AREA 1: DEL NORTE, HUMBOLDT, LAKE, MENDOCINO

AREA 2 -NOTED BELOW

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS NOTED BELOW:

DEL NORTE COUNTY:

Area 1: Extreme Southwest corner

Area 2: Remainder

HUMBOLDT COUNTY:

Area 1: Except Eastern and Southwestern parts

Area 2: Remainder

LAKE COUNTY:

Area 1: Southern part

Area 2: Remainder

MENDOCINO COUNTY:

Area 1: Central and Southeastern Parts

Area 2: Remainder

ENGI0003-019 06/30/2025

SEE AREA DESCRIPTIONS BELOW

Rates Fringes

OPERATOR: Power Equipment
(LANDSCAPE WORK ONLY)

GROUP 1		
AREA 1.....	\$ 55.85	28.56
AREA 2.....	\$ 57.85	28.56
GROUP 2		
AREA 1.....	\$ 52.25	28.56
AREA 2.....	\$ 54.25	28.56
GROUP 3		
AREA 1.....	\$ 47.64	28.56
AREA 2.....	\$ 49.64	28.56

GROUP DESCRIPTIONS:

GROUP 1: Landscape Finish Grade Operator: All finish grade work regardless of equipment used, and all equipment with a rating more than 65 HP.

GROUP 2: Landscape Operator up to 65 HP: All equipment with a manufacturer's rating of 65 HP or less except equipment covered by Group 1 or Group 3. The following equipment shall be included except when used for finish work as long as manufacturer's rating is 65 HP or less: A-Frame and Winch Truck, Backhoe, Forklift, Hydragraphic Seeder Machine, Roller, Rubber-Tired and Track Earthmoving Equipment, Skiploader, Straw Blowers, and Trencher 31 HP up to 65 HP.

GROUP 3: Landscae Utility Operator: Small Rubber-Tired Tractor, Trencher Under 31 HP.

AREA DESCRIPTIONS:

AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED, NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS, SUTTER, YOLO, AND YUBA COUNTIES

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AREA 2 - MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part
Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Except Eastern part
Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part
Area 2: Remainder

DEL NORTE COUNTY:

Area 1: Extreme Southwestern corner
Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part
Area 2: Remainder

FRESNO COUNTY

Area 1: Except Eastern part
Area 2: Eastern part

GLENN COUNTY:

Area 1: Eastern part
Area 2: Remainder

HUMBOLDT COUNTY:

Area 1: Except Eastern and Southwestern parts
Area 2: Remainder

LAKE COUNTY:

Area 1: Southern part
Area 2: Remainder

LASSEN COUNTY:

Area 1: Western part along the Southern portion of border with Shasta County
Area 2: Remainder

MADERA COUNTY

Area 1: Remainder
Area 2: Eastern part

MARIPOSA COUNTY

Area 1: Remainder
Area 2: Eastern part

MENDOCINO COUNTY:

Area 1: Central and Southeastern parts
Area 2: Remainder

MONTEREY COUNTY

Area 1: Remainder
Area 2: Southwestern part

NEVADA COUNTY:

Area 1: All but the Northern portion along the border of Sierra County
Area 2: Remainder

PLACER COUNTY:

Area 1: All but the Central portion
Area 2: Remainder

PLUMAS COUNTY:

Area 1: Western portion
Area 2: Remainder

SHASTA COUNTY:

Area 1: All but the Northeastern corner
Area 2: Remainder

SIERRA COUNTY:

Area 1: Western part
Area 2: Remainder

SISKIYOU COUNTY:

Area 1: Central part
Area 2: Remainder

SONOMA COUNTY:

Area 1: All but the Northwestern corner
Area 2: Remainder

TEHAMA COUNTY:

Area 1: All but the Western border with mendocino & Trinity

Counties
Area 2: Remainder

TRINITY COUNTY:
Area 1: East Central part and the Northeast border with
Shasta County
Area 2: Remainder

TULARE COUNTY;
Area 1: Remainder
Area 2: Eastern part

TUOLUMNE COUNTY:
Area 1: Remainder
Area 2: Eastern Part

IRON0377-004 01/01/2025

DEL NORTE COUNTY

Rates	Fringes
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Ironworkers:
Fence Erector.....\$ 45.78 26.51
Ornamental, Reinforcing
and Structural.....\$ 43.75 34.45

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,
Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

IRON0377-005 01/01/2025

HUMBOLDT, LAKE and MENDOCINO COUNTIES

Rates	Fringes
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Ironworkers:
Fence Erector.....\$ 45.78 26.51
Ornamental, Reinforcing
and Structural.....\$ 50.70 35.15

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,
Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LAB00067-006 07/01/2024

AREA ""1"" - ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO AND SANTA CLARA COUNTIES

AREA ""2"" - CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, STANISLAUS, AND TUOLUMNE COUNTIES

Rates Fringes

LABORER (ASBESTOS/MOLD/LEAD
LABORER)

Area 1.....	\$ 37.75	29.69
Area 2.....	\$ 36.75	29.69

ASBESTOS REMOVAL-SCOPE OF WORK: Site mobilization; initial site clean-up; site preparation; removal of asbestos-containing materials from walls and ceilings; or from pipes, boilers and mechanical systems only if they are being scrapped; encapsulation, enclosure and disposal of asbestos-containing materials by hand or with equipment or machinery; scaffolding; fabrication of temporary wooden barriers; and assembly of decontamination stations.

LAB00261-006 07/01/2023

MARIN COUNTY

Rates Fringes

LABORER

Mason Tender-Brick.....	\$ 37.54	25.55
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FOOTNOTE: Refractory work where heat-protective clothing is required: \$2.00 per hour additional.

LAB00324-003 07/01/2023

DEL NORTE, HUMBOLDT, LAKE, AND MENDOCINO COUNTIES

Rates Fringes

LABORER (TRAFFIC CONTROL/LANE
CLOSURE)

Escort Driver, Flag Person..	\$ 36.26	27.30
Traffic Control Person I....	\$ 36.56	27.30
Traffic Control Person II....	\$ 34.06	27.30

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

LAB00324-005 06/26/2023

Rates Fringes

Laborers: (CONSTRUCTION CRAFT
LABORERS)

Construction Specialist		
Group.....	\$ 36.20	27.30
GROUP 1.....	\$ 35.50	27.30
GROUP 1-a.....	\$ 35.72	27.30
GROUP 1-c.....	\$ 35.55	27.30
GROUP 1-e.....	\$ 36.05	27.30
GROUP 1-f.....	\$ 36.08	27.30
GROUP 2.....	\$ 35.35	27.30
GROUP 3.....	\$ 35.25	27.30
GROUP 4.....	\$ 28.94	27.30

See groups 1-b and 1-d under laborer classifications

Laborers: (GUNITE)

GROUP 1.....	\$ 36.46	27.30
GROUP 2.....	\$ 35.96	27.30
GROUP 3.....	\$ 35.37	27.30
GROUP 4.....	\$ 35.25	27.30

Laborers: (WRECKING)

GROUP 1.....	\$ 35.50	27.30
GROUP 2.....	\$ 35.35	27.30

Landscape Laborer (Gardeners,

Horticultural & Landscape

Laborers)

Establishment Warranty		
Period.....	\$ 28.94	27.30
New Construction.....	\$ 35.25	27.30

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts (not applicable to workers entitled to receive the wage rate set forth in Group 1-a): \$0.25 per hour additional.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Masonry and plasterer tender; Cast-in-place manhole form

setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucker; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonemason and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes, shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds (underground structures). All employees performing work covered herein shall receive \$.25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shotcrete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: All clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification ""material cleaner"" is to be utilized under the following conditions:

A: at demolition site for the salvage of the material.

B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.

C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of ""form stripping, cleaning and oiling and moving to the next point of erection"".

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzelman

GROUP 2: Nozzelman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Gunite laborer

WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

LAB00324-007 06/26/2023

DEL NORTE, HUMBOLDT, LAKE, AND MENDOCINO COUNTIES

Rates	Fringes
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Tunnel and Shaft Laborers:

GROUP 1.....	\$ 45.89	27.72
GROUP 2.....	\$ 45.66	27.72
GROUP 3.....	\$ 45.41	27.72
GROUP 4.....	\$ 44.96	27.72
GROUP 5.....	\$ 44.42	27.72
Shotcrete Specialist.....	\$ 46.41	27.72

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Gunite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunite & shotcrete gunman & potman; Headermen; High pressure nozzelman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzelman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

LAB00324-009 07/01/2023

DEL NORTE, HUMBOLDT, LAKE, MENDOCINO, NAPA, SOLANO, AND SONOMA COUNTIES

Rates	Fringes
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LABORER

Mason Tender-Brick.....	\$ 36.84	26.24
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FOOTNOTE: Refractory work where heat-protective clothing is required: \$2.00 per hour additional.

PAIN0016-021 01/01/2025

LAKE AND MENDOCINO COUNTIES

	Rates	Fringes
Painters:.....	\$ 53.38	28.04

* PAIN1034-001 06/01/1993

DEL NORTE AND HUMBOLDT COUNTIES

	Rates	Fringes
Painters:		
Brush & Roller.....	\$ 13.35 **	2.94
Sandblaster, spray, structural steel & swing stage.....	\$ 13.60 **	2.94

PAIN1176-001 07/01/2022

HIGHWAY IMPROVEMENT

	Rates	Fringes
Parking Lot Striping/Highway Marking:		
GROUP 1.....	\$ 40.83	17.62
GROUP 2.....	\$ 34.71	17.62
GROUP 3.....	\$ 35.11	17.62

CLASSIFICATIONS

GROUP 1: Striper: Layout and application of painted traffic stripes and marking; hot thermo plastic; tape, traffic stripes and markings

GROUP 2: Gamecourt & Playground Installer

GROUP 3: Protective Coating, Pavement Sealing

PLAS0300-005 07/01/2016

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...\$ 32.15		23.27

PLUM0038-004 07/01/2025

LAKE AND MENDOCINO COUNTIES

	Rates	Fringes
Landscape/Irrigation Fitter (Underground/Utility Fitter).....\$ 77.35		36.53
PLUMBER		
Work on wooden frame structures 5 stories or less excluding high-rise buildings and commercial work such as hospitals, prisons, hotels, schools, casinos, wastewater treatment plants, and research facilities as well as refrigeration pipefitting, service and repair work - MARKET		
RECOVERY RATE.....\$ 69.70	46.38	
All other work - NEW		
CONSTRUCTION RATE.....\$ 91.00	49.40	

PLUM0355-005 07/01/2025

DEL NORTE AND HUMBOLDT COUNTIES:

	Rates	Fringes
Underground Utility Worker /Landscape Fitter.....\$ 36.01		18.50

SHEE0104-016 06/29/2020

	Rates	Fringes
SHEET METAL WORKER Mechanical contracts		

\$200,000 or less.....	\$ 55.92	45.29
All other work.....	\$ 64.06	46.83

TEAM0094-001 07/01/2025

Rates	Fringes
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Truck drivers:

GROUP 1.....	\$ 43.26	34.28
GROUP 2.....	\$ 43.56	34.28
GROUP 3.....	\$ 43.86	34.28
GROUP 4.....	\$ 44.21	34.28
GROUP 5.....	\$ 44.56	34.28

FOOTNOTES:

Articulated dump truck; Bulk cement spreader (with or without auger); Dumpcrete truck; Skid truck (debris box); Dry pre-batch concrete mix trucks; Dumpster or similar type; Slurry truck: Use dump truck yardage rate. Heater planer; Asphalt burner; Scarifier burner; Industrial lift truck (mechanical tailgate); Utility and clean-up truck: Use appropriate rate for the power unit or the equipment utilized.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Dump trucks, under 6 yds.; Single unit flat rack (2-axle unit); Nipper truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump machine; Fork lift and lift jitneys; Fuel and/or grease truck driver or fuel person; Snow buggy; Steam cleaning; Bus or personhaul driver; Escort or pilot car driver; Pickup truck; Teamster oiler/greaser and/or serviceperson; Hook tender (including loading and unloading); Team driver; Tool room attendant (refineries)

GROUP 2: Dump trucks, 6 yds. and under 8 yds.; Transit mixers, through 10 yds.; Water trucks, under 7,000 gals.; Jetting trucks, under 7,000 gals.; Single-unit flat rack (3-axle unit); Highbed heavy duty transport; Scissor truck; Rubber-tired muck car (not self-loaded); Rubber-tired truck jumbo; Winch truck and "A" frame drivers; Combination winch truck with hoist; Road oil truck or bootperson; Buggymobile; Ross, Hyster and similar straddle carriers; Small rubber-tired tractor

GROUP 3: Dump trucks, 8 yds. and including 24 yds.; Transit mixers, over 10 yds.; Water trucks, 7,000 gals. and over; Jetting trucks, 7,000 gals. and over; Vacuum trucks under 7500 gals. Trucks towing tilt bed or flat bed pull trailers; Lowbed heavy duty transport; Heavy duty transport tiller person; Self- propelled street sweeper with self-contained refuse bin; Boom truck - hydro-lift or Swedish type extension or retracting crane; P.B. or similar type self-loading truck; Tire repairperson; Combination bootperson and road oiler; Dry distribution truck (A bootperson when employed on such equipment, shall receive the rate specified for the classification of road oil trucks or bootperson); Ammonia nitrate distributor, driver and mixer; Snow Go and/or plow

GROUP 4: Dump trucks, over 25 yds. and under 65 yds.; Water pulls - DW 10's, 20's, 21's and other similar equipment when pulling Aqua/pak or water tank trailers; Helicopter pilots (when transporting men and materials); Lowbed Heavy Duty Transport up to including 7 axles; DW10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournorocker, Euclid and similar type equipment when pulling fuel and/or grease tank trailers or other miscellaneous trailers; Vacuum Trucks 7500 gals and over and truck repairman

GROUP 5: Dump trucks, 65 yds. and over; Holland hauler; Low bed Heavy Duty Transport over 7 axles

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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END OF GENERAL DECISION"