

SDDOT CONSTRUCTION MANUAL
PROJECT MANAGEMENT SECTION
CHAPTER 4 – LABOR COMPLIANCE

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DAVIS-BACON & RELATED ACTS

Title 29 of the Code of Federal Regulations (CFR), Parts 1, 3 and 5 requires that the SDDOT, as the Contracting Agency, monitor and enforce compliance with the Davis-Bacon and Related Acts (DBRA).

There are two main purposes of the DBRA: to create a fair playing field to contractors bidding the jobs (they all are required to pay they same wage rates to complete the contract work), AND to protect the employees so they are paid timely and appropriately for the actual work they perform.

Covered contracts: the Davis-Bacon Act applies to all Federal-aid construction contracts exceeding \$2,000, and to all related subcontracts. In addition, the Transportation Commission adopted a minimum wage scale applicable to all Federal-aid projects, as well as to State-funded highway construction projects awarded for \$100,000 or more. (The following provisions are also stipulated in Parts I, IV and V of the FHWA-1273 Required Contract Provisions, and on the Contractor's Statement of Compliance - which is accompanied with each weekly Certified Payroll Report.)

LABOR COMPLIANCE CONTRACT PROVISIONS & DBRA COVERAGE ISSUES

Contractor's employees (laborers and mechanics), working on the site of work of a DBRA covered contract, are entitled to:

1. Receive the appropriate wage rate for the classification of work actually performed, without regard to skill, (ex: if a Common Laborer is operating a grader or scraper, he/she is entitled to receive the correct wage rate(s) regardless of experience or how long the duty is performed); and
2. Be paid unconditionally and not less often than once a week (bi-weekly or monthly payment of wages is not allowable); and
3. The full amount of wages and bona fide fringe benefits due at the time of payment must be paid without subsequent deduction or rebate on any account [except such payroll deductions permitted by regulations 29 CFR Part 3 issued by the Secretary of Labor under the Copeland Act], (employees must be paid for all hours worked; must be paid within seven days of the end of the workweek; only employee-approved deductions are allowed other than required tax deductions or court-ordered garnishments; it is not allowable to return any part of their wages back to the employer); and
4. Payment shall be computed at not less than the prevailing hourly wage, according to the rate schedule made part of the contract or any subsequent supplemental wage rate schedule(s), regardless of any contractual relationship which may be alleged to exist between the contractor(s) and such laborers and mechanics, (contract relationships that SHOULD BE included/reported but are commonly excluded from the wage rates and/or not reported on certified payrolls: Relatives of the contractor or subcontractors are not exempt; working foremen-see 29 CFR 5.2(m) definition of "laborers and mechanics" and

leased equipment with an operator-the operator is entitled to the wage rates and must be reported on the payroll(s) by the company paying his/her wages); and

5. Hours worked in excess of 40 in a workweek shall be compensated at not less than one-and-one-half times the basic rate for any part of the contract work; overtime pay is not subject to working “on the site of the work”-see definition in Part II of this LC Training. (Overtime pay is required after 40 hrs of work with the same contractor in a seven-day workweek; regardless if the work is performed on the project site or not; such as work performed at an off-site plant or pit, or any off-site hauling of material or equipment. Because off-site work is not subject to the wage rates, an off-site overtime violation would typically be identified by a wage complaint situation).

Other DBRA responsibilities. In addition to complying with the above contract provisions, contractors and subcontractors engaged in the work of Davis-Bacon covered contracts shall:

1. In a prominent place at the site of work, post at all times the following bulletin board posters: contract Wage Determinations (including any additional classifications), Form FHWA-1495 and Form FHWA-1022, (see the “Bulletin Board” chapter of this manual for sample posters); and
2. Request any additional classifications needed which are not listed in the wage determination from the State Highway Agency (SHA) contracting officer, (if a specialty type of work is required to complete this project and the wage class is not listed on the Wage Determination, the contractor or subcontractor is responsible to request additional wage classifications and rates); and
3. Each week in which any contract work is performed, submit a copy of all payrolls accompanied with a Statement of Compliance, with respect to the wages paid each of its employees for work performed during the preceding weekly payroll period, (if project work is not performed, then payrolls are not required to be submitted for that week); and
4. Each weekly statement shall be delivered by the contractor or subcontractor within seven days after the regular payment date of the payroll period, to the Federal or State agency in charge of the building or work, (SDDOT does not require subcontractors to submit their payrolls to prime contractors, subs should send their payrolls directly to Pierre); and
5. Preserve his/her weekly payroll records for a period of three years from the date of completion of the contract; and
6. Payrolls submitted shall set out accurately and completely the name, address, social security number of each such worker, his/her correct work classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid, (SDDOT’s Statement & Payroll forms and Instructions are available on the Labor Compliance link: <http://www.sddot.com/labor.asp>); and
7. Statement of Compliance shall be signed by the contractor or subcontractor or his/her agent who supervises payment of the persons employed under the contract and shall

certify compliance with the DBRA regulations (as stipulated in A.1-5 and B.1-6, above); and

8. Falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under U.S.C. 1002 and 31 U.S.C. 231, (subject to penalty of \$10,000, five years in prison, or both); and
9. The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representative of the State Highway Agency (SHA), Federal Highway Administration (FHWA), or DOL, and shall permit such representatives to interview employees during working hours on the job; and
10. If the contractor or subcontractor fails to submit the required records or make them available, the SHA, FHWA, and/or DOL, may after written notice to the contractor, suspend any further payment, advance, or guarantee of funds under any such contract or any other Federal contract with the same prime contractor, (the prime contractor may receive only one written notice before pay estimates are suspended when the contractor OR subcontractors do not submit payrolls timely and/or fails to provide requested records); and
11. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the Required Contract Provisions, (Example: if there is a wage finding identified against a subcontractor and the subcontractor refuses to correct the violation, the prime contractor is responsible for paying the subcontractor's employees their back wages); and
12. In the event it is found that any laborer or mechanic, including any apprentice, trainee, or helper has not been paid all or part of the wages from the contractor or subcontractor as required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action necessary to cause the suspension of any further payment, advance, or guarantee of funds under this contract or any other Federal contract subject to Davis-Bacon prevailing wages with the same prime contractor, until such violations have ceased, (When a violation occurs, the company in violation and/or the prime contractor are notified in writing and given 30 days to correct. If not corrected, the SDDOT may suspend any or all of the prime's pay estimates until such violations are resolved); and
13. Violation of any clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12.

"Site of the Work" is defined {according to the U.S. Department of Labor's (DOL's) Final Rule, dated December 20, 2000} as follows: The physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract. (Example of a 2nd site of work: building of a bridge where a major portion is constructed at a different location and it is then drifted down river to where it will remain - not a likely situation in SD).

How does the “site of the work” impact subcontracts? Please refer to *Section 8.1* of the *SDDOT Standard Specifications for Roads and Bridges*. This clarifies that production of material within the project limits the Department would consider this a subcontract; therefore, a DOT-202 Request to Sublet Work form would be required. The SDDOT defines “virtually adjacent” as located within a 1/2 mile of the closest right of way boundary to the project, as the crow flies. The Davis-Bacon Act requires the payment of contract wage rates and submissions of payrolls for work performed on the site of the work.

How does the “site of the work” impact Davis-Bacon coverage of plants/pits? The DOL's December 2000 Final Rule clarifies that two conditions must be met for plants or pits to be covered by the Davis-Bacon Act; 1) the plant/pit is set up after the opening of the bid is dedicated exclusively to the project, or nearly so, and 2) the plant/pit must be located adjacent or virtually adjacent to the work, in accordance with 29 CFR 5.2(1)(2). The plant/pit may be dedicated nearly exclusive to the project even if a small percentage is made available for sale to the public. (Example: A portable concrete batch plant is set up after a contract is awarded and is located within a ¼ mile of the project right of way. The plant operator and any truck drivers hauling concrete from the portable plant to any location on the project site are subject to the wage rates and the payroll submission requirements.)

For further clarification, in accordance with 29 CFR 5.2(1)(3), not included in the “site of the work” are: permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted project. Also excluded from the “site of work” are fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not located on the site of the work even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.

Equipment Owner-Operators (does not include owner-operator truckers) are considered employees under the DBRA. Consequently, they MUST be paid the correct Davis-Bacon wage, including fringe benefits, and be included on payrolls showing the hours worked and the wages paid. (Example: Contractor hires a crane owner-operator to perform work on the project site, the operator MUST be paid at least the crane operator wage rate and MUST be reported on the employer's [the company that hired him/her] payroll.)

Project Superintendents and Foremen, who physically perform work more than 20% of their time during a work week, MUST be paid at least the minimum hourly rate, plus overtime, for such (laborer and mechanic) time spent and for such type of work performed. For more details, please visit:

<http://www.dol.gov/esa/programs/dbra/faqs/suprvisr.htm>

Child Labor Laws prohibit children ages 14 and 15 from working on construction or repair projects. There is very limited non-hazardous work that 16 and 17 year olds may perform. If you suspect a child labor violation, PLEASE contact the DOT Labor Law Compliance Officer

immediately. Taking pictures would be helpful to resolve such cases. For details on what DOL considers hazardous work, please visit:

<http://www.dol.gov/elaws/esa/flsa/docs/haznonag.asp>

Relatives must be paid the appropriate Davis-Bacon wage for the job classification of project work performed and MUST be included on the payroll. There are no exceptions from coverage under the Davis-Bacon & Related Acts for family relationships, or for relatives performing work of laborers or mechanics.

Temporary Employment Agency is the employer and should be treated as a subcontractor. Employees who are hired through temporary employment agencies MUST be paid not less than the appropriate Davis-Bacon wage and MUST appear on the payroll of the company that pays their wages.

Exempt from the Davis-Bacon & Related Acts Labor Provisions:

1. Workers that are not working “on site of the work” are exempt. The most common type of workers not working “on site of the work” are truckers. (SDDOT considers trucking off site if one end of the haul is not on the site of the work, and no work is performed on the project site. The DOL’s 2000 final rule clarifies that delivery of material does not meet the definition of “construction” work.)
2. Also exempt are categories of workers that are NOT considered “laborers and mechanics” in the definitions of the Davis-Bacon & Related Acts, which are:
 - a. Architects and engineers;
 - b. Surveyors, gravel testers, technicians, scale operators;
 - c. Timekeepers;
 - d. Inspectors;
 - e. Watchmen and guards; and
 - f. People performing administrative or executive duties
3. Specifically exempt in the DBRA provisions are:
 - a. Legitimate truck owner-operators; and
 - b. Material suppliers provided that no production or work is performed on the site of the project.

Note: Equipment owner-operators are not exempt; operators of leased equipment working on-site must be paid the appropriate wage rates and must be reported on the Certified Payrolls of the company that hired them.

PRECONSTRUCTION MEETINGS – LABOR COMPLIANCE DISCUSSION ITEMS

The most recent version of the SDDOT’s Preconstruction Meeting Guideline Policy must be used to ensure that all of the necessary topics are covered and correlating information is provided to the contractor and subcontractors. The (current) DOT Preconstruction Meeting Guideline Policy is available at:

<http://intranet.state.sd.us/dot/policy/detail.asp?pid=426> .

Subcontract Approvals and Contract Provisions: Advise the prime contractor that all subcontracts must be approved in writing between prime and DOT. This requires a *Request to Sublet Work, Form DOT-202* be submitted before any sublet work is performed. Each subcontract MUST contain the appropriate *Required Contract Provisions FHWA-1273*, and may not be incorporated by reference in any case. (Please see Exhibit A for an example of the FHWA-1273.) Written subcontract approval is a contract specification and may subject the prime contractor to a price adjustment if there is a failure to comply. Please refer to “*Section 8.1 of the SDDOT Standard Specifications for Roads and Bridges*” for specification details on submitting a written request to sublet work.

Bulletin board posters are provided to the prime contractor, which must be waterproofed and displayed in a prominent and accessible place where it is easily seen by the workers on the project site. Please see Chapter 9 of this SDDOT Construction Manual for more specific Bulletin Board requirements and examples of the posters.

Contractor payroll requirements: Advise contractors that employees must be paid weekly. Each contractor and subcontractor must submit a Weekly Certified Payroll Report for each week any project work is performed, no later than 14 days following the end of the workweek. Prime contractors and subcontractors shall send their payrolls directly to the DOT Labor Compliance Office in Pierre. Payrolls must contain accurate and complete information, including Project and PCN numbers. Failure to submit timely payrolls will result in pay estimate suspensions. The contractor may receive only one written notice prior to suspension. (Payrolls are not required to be submitted if project work is not performed during the week.)

BI-WEEKLY PROGRESS REPORTS (WPRS) IN CONSTRUCTION MEASUREMENT AND PAYMENT (CM&P) SYSTEM

The CM&P System is interfaced with the Labor Compliance Payroll System (LCPS). The Bi-Weekly Progress Report (WPR) feature of the CM&P, that is completed by DOT field personnel, is critical to monitor and enforce compliance with the Davis-Bacon & Related Acts labor provisions as it triggers when payrolls are required from contractors.

In the “Work in Progress” field of the WPR, each company working should be listed with a brief description of the work being performed during each week. (*Please see Exhibit B, Sample WPR, at the end of this Chapter 4*)

In the “Contract Day Worked” field of the WPR, the days worked during the two-week period are marked “Y” for each contractor plus the “Exempt indicator” is marked Yes or No. (*Please see Exhibit B, Sample WPR, at the end of this Chapter 4*)

Exempt Indicator, what is this? If the “Exempt Ind” is marked “Y” (Yes), it means the contractor(s) are not covered under the DBRA, therefore are not required to pay prevailing wage rates or submit Certified Payroll Reports. If this field is left blank, the CM&P is defaulted to enter “N” (No) in the Exempt field.

(Please refer to page 4-6 of this chapter for Davis-Bacon EXEMPT details.)

HANDOUTS AND WAGE COMPLAINTS/INVESTIGATIONS

As a means of ensuring contractors comply with applicable labor regulations, “handout” information cards are distributed twice each construction season. The DOT Labor Law Compliance Officer will coordinate the handout distributions. The handout cards are distributed by SDDOT project personnel to each person working on any active Federal-aid or qualifying State-funded highway construction projects. The cards inform the contractor and subcontractor employees of their rights and the wage rates they are entitled to for the type of work they are performing. The handouts are color-coded to correspond with the applicable contract Wage Decision poster on the project bulletin board.

Wage Complaints often occur after the Wage Handout cards are distributed. If a contractor’s employee notifies you that he/she is not being paid properly, PLEASE report the potential wage violation to the DOT Labor Law Compliance Officer. Observe the type of work they are performing and please take notes and pictures of them working, if it appears they are being classified and paid incorrectly.

Investigations resulting from wage complaints typically require the project personnel’s assistance, which is often critical in resolving such cases. The DOT Labor Law Compliance Officer may contact you to conduct interviews and/or may request information from you to clarify the types of work performed by the construction company’s employee(s) to determine if a complaint is justified. (Please see Exhibit C, Labor Standards Interview Form, at the end of this chapter.)

ELECTRONIC LINKS TO SDDOT’S AND TO FEDERAL FORMS & REGULATIONS

SDDOT’s Links to:

1. Subcontract Requirements: Detailed information about the prime contractor’s responsibilities to avoid termination of their contract(s) and possible debarment. Includes links to the DOT-202 Form (Request to Sublet Work) and to the FHWA-1273 Required Contract Provisions.
http://www.sddot.com/pe/projdev/bidlet_contractor_subreq.asp
2. Labor Compliance Payroll Forms and Instructions
<http://www.sddot.com/labor.asp>
3. Defined Work Classifications - to assist employers with classifying their employees properly
http://www.sddot.com/labor_dwc.asp
4. Most recent Wage Poster
http://www.sddot.com/labor_wagerates.asp

Federal Links to:

1. USDOL's Davis-Bacon Regulations 29 CFR Part 3 Index – Payroll Submission Requirements & Allowable Payroll Deductions
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_3/toc.htm
2. USDOL's Davis-Bacon & Related Acts Provisions and Procedures, 29 CFR Part 5, Subpart A Index (Section 5.5 has the Labor Contract Provisions, that are contained in the FHWA-1273)
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_5/Subpart_A.htm
3. USDOL's Interpretations of Fringe Benefits of DBRA, 29 CFR 5, Subpart B Index
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_5/Subpart_B.htm

EXHIBITS

- A. FHWA-1273 Required Contract Provisions
- B. Sample Bi-Weekly Progress Report (WPR)
- C. Labor Standards Interview Form

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

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I. GENERAL

1. 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.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

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

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - 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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his 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 his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - 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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - 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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA 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 minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - (1) The number 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;
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. 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.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - (2) the additional classification is utilized in the area by the construction industry;
 - (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said 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
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

- a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. Apprentices:

- (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division

determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

- (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

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

6. Withholding:

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

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - (2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

- 1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
- 2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.
 - 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 on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:**

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

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

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. 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.
- 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.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

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

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

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she 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.

* * * *

DOT-234 (11-95)

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

01/09/2008

Bi-Weekly Progress Report No. 11

Page 1 of 2

(Sep 16, 2007 - Sep 29, 2007)

PCN 6171	Contract Amount \$2,332,629.03
* Project No. NH 0083(09)118 County Stanley	Period Ending 09/29/2007
Prime Contractor T&R CONTRACTING INC.	Orig Compl Date 10/26/2007
Type of Work PCC Pavement, Cold Milling Asphalt Concrete, Curb & Gutter, Sidewalk, Roadway Lighting, & Pavement Marking	Orig Contract Time Working Days
	Penalty Days 0.0 Days

Work Started	Work Suspended	Work Resumed	Field Work Completed
05/03/2007			
Working Days This Period	Working Days To Date	Penalty Days This Period	Penalty Days To Date
0.00	0.00	0.00	0.00
Percent Complete			86.91%
Amount Paid to Date			\$2,027,270.39

Work In Progress This Period

First Week:

T&R Contracting worked on grading the turn lane in preparation for paving. They placed Fast Track Concrete for crossovers at 3rd Ave, 5th Ave, 7th Ave, and 9th Ave. They placed PCCP for the north end crown transition. They also maintained traffic and traffic control devices.

Custom Contracting completed the sidewalk for the project except for the tie-in at the south end of the project.

Dakota Traffic Services switched traffic from Phase II to Phase III.

VanderPol removed the posts for the two sign bridge removals. They removed the majority of the salvage from the turn lane. They hauled salvage to the DOT stockpile site west of Ft. Pierre.

Logan Electric installed breakaway bases on the luminaire pole footings and installed conduit.

Second Week:

T&R Contracting prepped the turn lane for paving, and completed paving of the turn lane. All mainline paving is complete. They began working on punchlist items. They removed and replaced additional pavement for the parking lot at 62+16 Rt. They also completed the sidewalk tie-in at the south end of the project. They maintained traffic and traffic control devices.

Logan Electric replaced luminaire pole footing for L11. They completed installation of conduit for the project and pulled all the wires for the project.

General Comments

The turquoise wage rate handout cards were handed out to the Contractors' employees working on this project on 9-27-07.

Revision Comments

Contractors Working	Name	Week 1	Exempt	Week 2	Exempt
Brosz Engineering Inc					
Custom Concrete LLC		Worked			
Dakota Traffic Services		Worked			
Industrial Builders Inc					
Logan Contractors Supply Inc		Worked		Worked	
Morris Inc					
Skyview Construction Co LLC				Worked	
T&R CONTRACTING INC.		Worked		Worked	
VanderPol Dragline Inc		Worked			

Day	Date	Working Day #	Penalty Day #	Weather and Comments
Sunday	09/16/2007			Sunday - No Work
Monday	09/17/2007			Working - Partly Cloudy - Temp: H 79 L 56 - Wind: H 20 L 10

CC: Region Engineer
 FHWA
 Region Materials Engineer
 Construction Engineer
 Bridge Engineer
 File

Prepared by

Approved by

 Pierre Area Engineer

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EXHIBIT – Sample SDDOT Labor Standards Interview

YOUR IDENTITY AND RESPONSES WILL BE KEPT CONFIDENTIAL TO THE MAXIMUM EXTENT POSSIBLE BY LAW.

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION LABOR STANDARDS INTERVIEW			
PROJECT NUMBER	PCEMS NUMBER	EMPLOYEE'S NAME, ADDRESS, & HOME/CELL PHONE NO.	
NAME OF PRIME CONTRACTOR		EMPLOYEE'S PERMANENT ADDRESS (<i>Street, City, ZIP Code</i>)	
NAME OF EMPLOYER		What is your WORK CLASSIFICATION?	WAGE RATE
		SUPERVISOR'S NAME (<i>Firs & Last Name.</i>)	
1.	DO YOU COMPLETE YOUR OWN TIME SHEET?	IF NO, WHO DOES?	
2.	DO YOU WORK OVER 40 HOURS PER WEEK? <input type="checkbox"/> YES <input type="checkbox"/> NO (average # hours each week _____)		
3.	ARE YOU PAID AT LEAST TIME AND A HALF FOR OVERTIME HOURS? <input type="checkbox"/> YES <input type="checkbox"/> NO		
4.	ARE YOU RECEIVING ANY CASH PAYMENTS OR FRINGE BENEFITS? <input type="checkbox"/> YES <input type="checkbox"/> NO (EX: HEALTH INSURANCE OR RETIREMENT CONTRIBUTIONS PAID BY THE EMPLOYER)		
5.	WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE WITHHELD FROM YOUR PAY?		
6.	WHAT EQUIPMENT HAVE YOU OPERATED ON THIS PROJECT?		
7.	DO YOU RECEIVE THE SAME PAY FOR EVERY TYPE OF WORK YOU PERFORM?		
8.	HOW OFTEN DO YOU RECEIVE A PAYCHECK?		
9.	ARE YOU REQUIRED TO RETURN ANY OF YOUR WAGES TO YOUR EMPLOYER? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, FOR WHAT REASON?		
10.	HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?		
10a.	HOURS	10b.	WHAT DATE WAS THAT (MMDDYY)?
10c.	WHAT TOOLS OR EQUIPMENT DID YOU USE?		
10d.	WHEN DID YOU BEGIN WORK ON THIS PROJECT (MMDDYY)?		
10e.	WHAT DAYS DO YOU NORMALLY WORK DURING THE WEEK?		
10f.	WHAT TIME DO YOU NORMALLY START & STOP WORKING EACH DAY?		
11.	HAVE YOU EVER BEEN ENROLLED IN THE ON-THE-JOB TRAINING PGOGRAM, IF SO EXPLAIN?		
	HAVE YOU HAD ANY PROBLEM RECEIVING THE CORRECT PAY FOR THE TYPE OF WORK YOU PERFORM, OR DO YOU HAVE ANY ADDITIONAL COMMENTS?		
I HAVE READ THE ABOVE AND CERTIFY IT TO BE CORRECT TO THE BEST OF MY KNOWLEDGE			
EMPLOYEE'S SIGNATURE		DATE	
INTERVIEWER'S SIGNATURE		DATE	
INTERVIEWER'S COMMENTS			
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED			
IS EMPLOYEE PROPERLY CLASSIFIED AND PAID? (<i>If additional space is needed, use Comments section</i>) <input type="checkbox"/> YES <input type="checkbox"/> NO			
ARE WAGE RATES AND POSTERS DISPLAYED? <input type="checkbox"/> YES <input type="checkbox"/> NO			
FOR USE BY PAYROLL CHECKER			
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA? <input type="checkbox"/> YES <input type="checkbox"/> NO			
COMMENTS			
DATE OF CHECK	NAME OF CHECKER	JOB TITLE	SIGNATURE

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