



State of Illinois
Illinois Department of Transportation

Illinois Department of Transportation
Bureau of Freight Rail Management

Chicago Region Environmental and Transportation Efficiency (CREATE) Program Rail Projects

Phase II Manual

December 2017





Illinois Department of Transportation

Office of Intermodal Project Implementation

69 West Washington Street / Suite 2100 / Chicago, Illinois 60602

December 13, 2017

MEMORANDUM TO ALL CREATE PROGRAM PHASE II CONSULTANTS

SUBJECT: Updated CREATE Phase II Project Report Manual: Plans, Specifications & Estimates Approval Procedures

Effective immediately, the Illinois Department of Transportation Bureau of Freight Rail Management and a partner with the Chicago Region Environmental and Transportation Efficiency (CREATE) Program prepared the CREATE Program Rail Projects Phase II Report Manual: Plans, Specifications & Estimates (PS&E) Approval Procedures Manual December 2017 for implementation of Final Engineering on Phase II CREATE Program rail projects.

Phase II (Final Engineering) Plans, Specifications and Estimates (PS&E) for the CREATE projects documents the coordinated efforts of the Illinois Department of Transportation (IDOT) and other involved parties as to how the CREATE Project improvement is designed to satisfy the project's purpose and need, address Environmental Commitments identified in the Phase I Project Report and provide needed elements for constructing the improvement. The size of the Phase II PS&E's will vary depending on the magnitude, complexity, and type of improvement proposed and whether it is contracted or performed in-house. The general work flow process of Phase II Final Engineering related to CREATE Program rail projects is shown on the CREATE Phase II and Phase III Flow Process chart.

The Phase II Report ensures that Final Engineering addresses all project scope established from the Phase I Report and is consistent with Federal, State and local goals & objectives, permit issues and addresses Environmental Commitments.

The updates reflected herein are effective immediately.

Thank you.

A handwritten signature in blue ink, reading "Samuel Tuck III".

Samuel Tuck III, P.E., M.S.
Bureau Chief, Freight Rail Management
Office of Intermodal Project Implementation

DOCUMENT CONTROL AND REVISION HISTORY

The CREATE Program Phase II Manual and attachments are reviewed during use for adequacy and updated by the Bureau of Freight Rail Management, as necessary. The approval process for changes to this manual is conducted in accordance with the procedures outlined in the CREATE Program Joint Statement of Understandings and subsequent amendments.

An archived version of this manual is available for examination in the IDOT Policy & Research Center, Room 320 of the Hanley Building, 2300 S. Dirksen Parkway, Springfield, Illinois.

Electronic

The CREATE Phase II Manual is distributed in Portable Document Format (PDF), and the official version of the manual and attachments are available on the IDOT Policy & Research Center Library site on the Inside IDOT website and from the Bureau of Freight Rail Management.

Hard Copy

This manual is no longer distributed in hard copy format. Individuals who choose to print a hard copy of the manual and attachments are responsible for ensuring they maintain the most current version.

Revision History - CREATE Phase II Manual

<u>Revision Date</u>	<u>Description</u>	<u>Approval</u>
August 2009	Phase II Manual Draft	B. Bustamante
December 2017	Revisions to incorporate the updated Phase II & Phase III Flow Process Chart; updated to include required FHWA forms and guidelines; updated to address environmental commitments from Phase I Reports; and updated to clarify requirements for Land Acquisition activities and the "Uniform Act".	CREATE Program Partners


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CREATE Program Rail Projects Phase II Manual: Plans, Specifications and Estimates Approval Procedures

Prepared by: Illinois Department of Transportation
Office of Intermodal Project Implementation

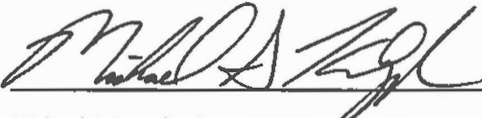
December 2017

By signing below, you acknowledge receipt of this document.

IDOT Bureau Chief, Freight Rail Management:  12/18/17
Accepted Samuel Tuck III – Bureau Chief, Freight Rail Management Date

Chicago Department of Transportation:  8/9/17
Accepted Jeffrey J. Sriver – CREATE Program Manager Date

Association of American Railroads:  8/3/17
Accepted William C. Thompson – Chief Engineer, CREATE Program Date

Federal Highway Administration:  12/14/17
Accepted Michael S. Kowalczyk - CREATE Program Manager Date

Metra:  8-3-17
Accepted Pete Zwolfer – Deputy Exec. Director – Operations Date

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The following documents are included as Phase II Report Sample and Reference documents to assist in the preparation of Phase II Reports:

Attachments – Phase II Report Forms and Sample Documents

<u>Attachment 1</u>	Sample Cover Page and Table of Contents
<u>Attachment 2</u>	Sample Signature Page
<u>Attachment 3</u>	Sample CREATE Phase II PS&E 100% Design Cost Form 3.1
<u>Attachment 4</u>	Sample CREATE Project Invitation to Bid Advertisement, Certification of Publication, and News Services
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<u>Attachment 13</u>	Buy America and Buy American Provisions
<u>Attachment 14</u>	Procedures for Land Acquisition – IDOT District 1 Bureau of Land Acquisition

ACRONYMS

AC	Advanced Construction
ACSRA	Advance Construction State Rail Agreement
BA	Buy America
BCR	Bridge Condition Report
BD	Bid Work
BDE	IDOT's Bureau of Design & Environment
BLA	Bureau of Land Acquisition
BoRR	IDOT's Bureau of Railroads
CADD	Computer Aided Design Drawings
CDOT	Chicago Department of Transportation
CREATE	Chicago Region Environmental and Transportation Efficiency
CFR	Code of Federal Regulations
CTA	Concurrence to Award
CTCO	Chicago Transportation Coordination Office
DBE	Disadvantaged Business Enterprise
DPIT	Division of Public and Intermodal Transportation, superseded by OIPI in 2016
DSRA	Draft State Rail Agreement
ECAD	Environmental Class of Action Determination
ESR	Environmental Survey Request
FA	Force Account Work
FE	Final Engineering
FHWA	Federal Highway Administration
FRA	Federal Railway Administration
IC	Implementation Committee
IDOT	Illinois Department of Transportation

ITB	Invitation to Bid
MPA	Modified Project Authorization
MOT	Maintenance of Traffic
MUSRA	Master Utility State Rail Agreement
NB	Non-Bid Work – This designation, original to the program, is no longer in use.
NTA	Notice to Advertise
NTP	Notice to Proceed
OIPI	Office of Intermodal Project Implementation
PESA	Preliminary Environmental Site Assessment
PMR	Project Management Reserve
PR	Project Report
PS&E	Plans, Specifications and Estimates
PSI	Preliminary Site Investigation
PTS&L	Preliminary Type, Size and Location
RFP	Request for Proposal
ROW	Right of Way
RR	Railroad (Lead Railroad)
SRA	State Rail Agreement
UC	Utility Company
UCP	Unified Certification Program
WEB	Internet

Section 1 Purpose of Phase II Manual for CREATE Projects

The purpose of this Phase II Manual is to provide guidance on the preparation of Phase II Reports and to document State and Federal Phase II compliance requirements. The Phase II Manual provides details on accomplishing final design project work.

Preparation of Phase II documents in accordance with the procedures in this manual is a necessary step to progressing the Project towards construction. CREATE Program procedures established by CREATE railroad (i.e., Association of American Railroads, Burlington Northern and Santa Fe Railway Company, Canadian National Railway Company, Canadian Pacific Railway, CSX Transportation, Inc., Norfolk Southern Railway Company, Union Pacific Railroad Company, Metra, Amtrak, The Belt Railway Company of Chicago, CSX's Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt Railroad) and government agency (IDOT, FHWA, Cook County, and CDOT) partners require approval of the Phase II documents by IDOT Office of Intermodal Project Implementation (OIPI) and FHWA before Phase III (construction) contracts can be awarded. A complete and accurate Phase II Report, along with a draft State Rail Agreement (SRA), is required by IDOT to support FHWA for approval of Phase III funding.

Section 2 Scope of this Manual

2.1 Scope

This Phase II Manual describes the required elements to be included in CREATE Phase II Reports, including the processes for obtaining professional engineering services for final engineering of the Project, obtaining construction management services, completing final design drawings and detailed specifications, completing utility modification or relocation services, and obtaining any required real estate for the Project.

The Phase II process incorporates steps to ensure all Phase I environmental commitments are included in the final design. Phase II design is based upon the Phase I approved pre-final schematics and initial geometrics. Whenever any changes to the Phase I approved pre-final schematic or initial geometrics is made during the Phase II final design period, IDOT OIPI and FHWA will determine whether technical memos are required to assess the potential implications to the analysis and conclusions contained in the previously approved environmental documentation. If changes to the environmental analysis or conclusions are identified, these considerations, along with any related environmental commitments, may need to be refined and/or added to the Phase II and Phase III efforts. The CREATE Phase II Report must provide adequate direction for the Phase III efforts including plans, specifications, cost estimates, support services and environmental commitments.

2.2 Phase II Flow Chart

IDOT OIPI's flowchart illustrating the Phase II activities can be found on the CREATE Program Website:

http://www.createprogram.org/linked_files/Phase2-3Flowchart.pdf

Section 3 Contracting for Professional Services

When the Lead Railroad or Railroad (RR) intends to contract with an outside company for professional services (except professional right of way services) for CREATE Phase II activities, the procedures listed in Sections 3.1 and 3.2 shall be followed. The procedures are represented in the Phase II Services portion of the Flow Chart at the link shown above in Section 2.2, Phase II Flow Chart.

Professional services include, but are not limited to, the following tasks:

- Engineering services required for the planning, design, estimate of cost, and preparation of plans and special provisions
- Project studies
- Hydrologic/hydraulic analysis
- Geotechnical services
- Environmental reports
- Surveying
- Construction inspection
- Mechanical/Electrical engineering
- Architecture
- Quality Assurance/Quality Control

3.1 Procedure for Approval of Railroad Selection Process

1. The RR submits their CREATE Professional Services Selection Process to IDOT OIPI for approval. These procedures must comply with the 23 C.F.R. Part 172 Federal requirements.
2. IDOT OIPI reviews and approves the Professional Services Selection Process.
3. The RR uses these procedures for all their professional services solicitations, unless new procedures are submitted for approval.

3.2 Procedure for Selection of Professional Services

1. The RR submits the proposed Professional Services package (draft Request For Proposal - RFP) to IDOT OIPI in compliance with FHWA approved procedures. The package must include the scope, estimated cost for services, estimated cost for construction, and requirements for funding the Project, including Debarment and Lobbying Certification, per requirements of FHWA Form-1273.
2. IDOT OIPI reviews the package, indicates a DBE goal, confirms the goal with IDOT BDE, and issues a Notice to Advertise (NTA) for Professional Services to the RR. DBE firms must be on the Illinois Unified Certification Program (UCP) directory to be eligible to apply toward the DBE goal established by IDOT BDE.
3. The RR advertises the solicitation for a minimum of three weeks prior to selection. The advertisement must be placed in a publication which is likely to be seen by all consultants

including DBE firms. To comply with State guidelines, the advertisement must also be placed in current official State newspaper (Breeze Courier by Breeze Printing Company). A minimum of 3 publications must be used for each solicitation, such as Sun Times, Defender and Hoy. The advertisement will also be posted on the CREATE website.

4. Professional service providers submit their proposals.
5. The RR analyzes proposals from respondents, verifies the required certifications and statements are correctly provided within the proposal response, and submits its recommendation to IDOT OIPI.
6. IDOT OIPI analyzes the proposals, and either recommends rejection, when appropriate, or concurs with the RR's recommendation. If the selection is rejected due to non-compliance of FHWA approved procedures, IDOT OIPI sends justification and all proposals back to the RR for a new recommendation. If IDOT OIPI concurs with the RR's initial or subsequent recommendation, IDOT OIPI issues Concurrence to Award (CTA). For amounts exceeding \$100,000, IDOT OIPI submits the package to FHWA for concurrence.
7. After the State Rail Agreement (SRA) is fully executed and a Notice to Proceed (NTP) has been issued to the RR, the consultant may begin Professional Services for the RR.
8. The RR awards the contract and signs the agreement with the professional service provider.
9. IDOT OIPI posts the award on the CREATE website at www.createprogram.org

Section 4 Contracting for Professional Right of Way Services

When the Project requires the acquisition of right-of-way, the Lead Railroad (RR) needs to follow the procedures and solicitation process indicated in Sections 4.1 and 4.2 below. All real estate acquisitions must follow the Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act) and current State-approved procedures within the Bureau of Land Acquisition's Policies and Procedures Manual. More specifically, land acquired as part of a CREATE Program rail project will follow the Local Public Agency land acquisition procedures developed by IDOT District 1 Bureau of Land Acquisition (see Attachment 14).

4.1 Procedures for Contracting Professional Right of Way Services (See Figure 1)

1. The RR submits their CREATE Professional ROW Services Selection Process to IDOT OIPI for approval. These procedures will comply with the 23 C.F.R. Part 172 Federal requirements.
2. IDOT OIPI reviews, assigns a DBE Goal that is concurred by IDOT BDE, and approves the selection process once it meets the requirements.
3. The RR will use these procedures for all their professional ROW services solicitations, unless new procedures are submitted for approval.

4.2 Solicitations for Professional Right of Way Services (See Figure 1)

1. The RR submits the proposed Professional ROW Services solicitation package to IDOT OIPI. This may occur prior to Design Approval and may include multiple segments or Projects.
2. IDOT OIPI issues a Notice to Advertise (NTA) for Professional ROW Services.
3. The RR advertises the solicitation for a minimum of three weeks in three publications prior to selection. The advertisement must be placed in a publication which is likely to be seen by all consultants including DBE firms. To comply with State guidelines, the advertisement must also

be placed in the current official State newspaper (Breeze Courier by Breeze Printing Company). IDOT OIPI recommends that the RR uses a ROW Professional which is pre-qualified with IDOT's Bureau of Land Acquisition (BLA). See Attachment 14 for additional information. The advertisement is also posted on the CREATE website.

4. Consultants submit their proposals.
5. The RR analyzes the proposals from respondents, verifies the required Debarment and Lobbying certifications and statements for DBE goals are correctly provided within the proposal response, and submits its recommendation to IDOT OIPI.
6. IDOT OIPI reviews the RR's recommendation and either recommends rejection, when appropriate, or concurs with the RR's recommendation. If the selection is recommended to be rejected due to non-compliance of FHWA approved procedures, IDOT OIPI sends a justification letter and all proposals back to the RR for a new recommendation. If IDOT OIPI concurs with the RR's initial or subsequent recommendation, IDOT OIPI issues a Concurrence to Award (CTA).
7. After Design Approval is obtained and the ROW SRA is fully executed, a Notice to Proceed (NTP) will be issued to the RR by IDOT OIPI.
8. The RR awards the contract and signs the agreement with the consultant.
9. The consultant begins Professional ROW Services for the RR in accordance with the Uniform Act and State-approved procedures within the BLA's Land Acquisition Policies & Procedures Manual (links below). At the time this manual was created, all website links were accurate. Contact the Bureau Chief, Freight Rail Management for up-to-date information if website links are found to be deactivated at the time of usage.

<http://www.idot.illinois.gov/doing-business/procurements/land-acquisition-services/index>

A direct link to this manual is shown below:

<http://www.idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-&-Handbooks/Highways/Land-Acq/Land%20Acquisition%20Manual.pdf>

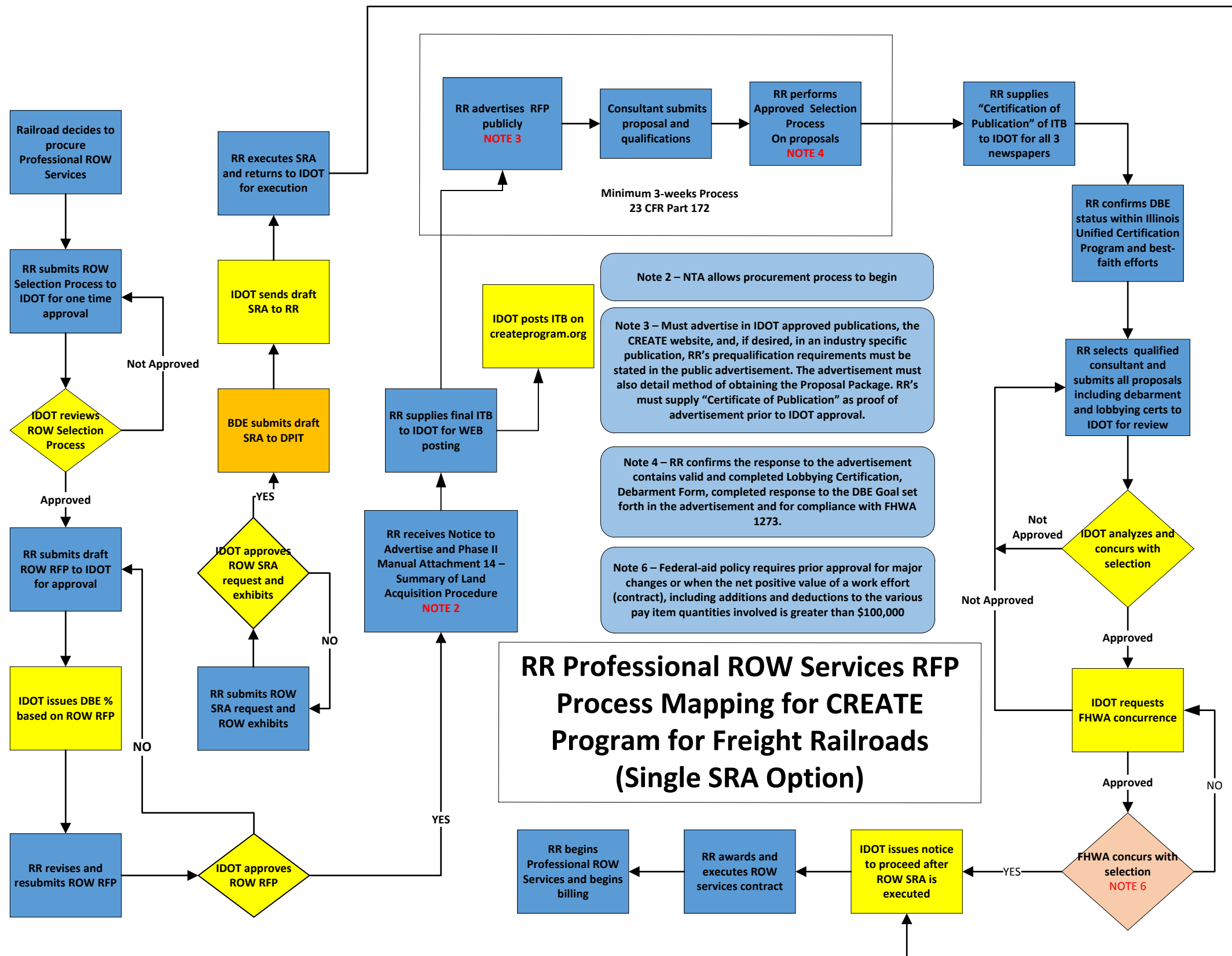
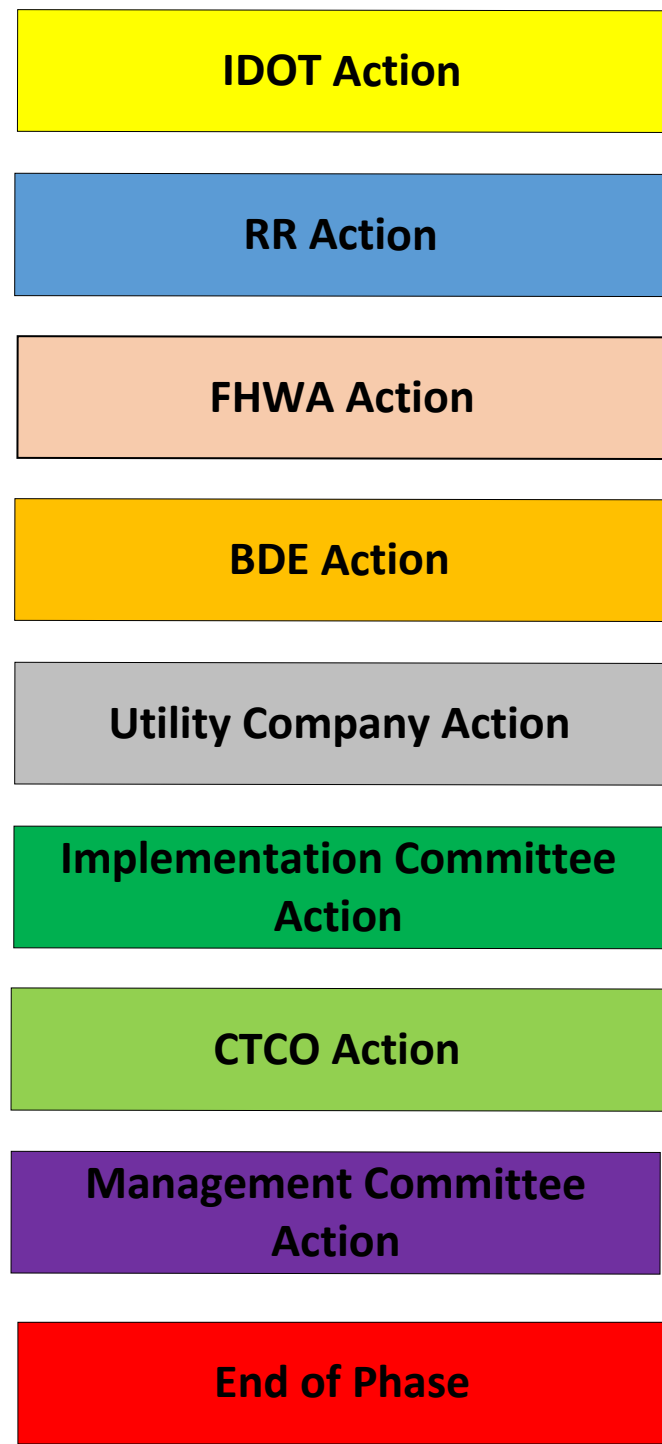


Figure 1 – Contracting for Professional Right of Way (ROW) Services

Section 5 Contracting Phase III Work with Lowest Qualified Bidder

When the Final Design proceeds to construction and requires the use of a Contractor for the Project under the Lead Railroad's (RR's) supervision, the following steps are needed to comply with Federal and State requirements for contracted work. The CREATE Phase II and Phase III Flow Chart depicts this process in the Phase II Design Report (PS&E) and Phase III Bid/SRA portions of the chart found at the following link:

http://www.createprogram.org/linked_files/Phase2-3Flowchart.pdf

1. The RR submits the completed and signed PS&E package to IDOT OIPI for approval. The RR requests a SRA from IDOT OIPI based upon the PS&E package.
2. The PS&E package is reviewed, approved, and signed by IDOT OIPI and a SRA is drafted based on PS&E scope.
3. IDOT OIPI forwards the PS&E package to FHWA for approval, and submits a Project Authorization request to FHWA for concurrence whenever Federal funds will be used for the Project.
4. FHWA approves and signs the PS&E package and concurs on the Project Authorization.
5. IDOT OIPI sends the RR notice of PS&E approval, forwards the SRA for the RR's signature, and gives Notice to Advertise (NTA) authority to begin procurement and construction activities.
6. The RR signs the SRA and returns it to IDOT OIPI for their execution.
7. The RR advertises the Project and availability of the bid package in a minimum of three publications for a minimum of three weeks prior to bid opening. The package includes detailed drawings, specifications, insurance requirements and government forms such as Debarment and Lobbying certifications. The advertisement must be placed in a publication which is likely to be seen by all bidders including DBE bidders. To comply with State guidelines, the advertisement must also be placed in the current official State newspaper (Breeze-Courier by Breeze Printing Company). The RR shall send an electronic copy of the advertisement to IDOT OIPI at the same time the advertisement is placed. The advertisement is also posted on the CREATE website. A sample advertisement with the minimum required information is shown in Attachment 4. Since any addendum constitutes a deviation from the approved PS&E, the obligation of Federal-aid funds may be impacted by the change. Therefore, an addendum must be approved by FHWA prior to its release to the prospective bidders.
8. The RR holds a pre-bid meeting and a site visit, if required in the PS&E.
9. If attendance at a pre-bid meeting is made a stipulation of bid responsiveness, the Project advertisement and all bidding documents must state that attendance at meeting is required. The contracting community must be given adequate notice to comply with such a requirement (usually a minimum of one week after advertisement date).
10. Contractors submit bids at least two weeks after pre-bid meeting or 3 weeks after advertisement date to the designated location in the advertisement and PS&E.
11. The RR opens the bids and reads them publicly, and shall use a call-in number if the bids are not read locally.
12. The RR analyzes the bids, then submits the compliant and responsible bid with its recommendation to IDOT OIPI for further analysis.
13. IDOT OIPI analyzes the bids and the RR's recommendations, and either recommends rejection

of bids, when appropriate, or concurs with the RR's recommendation. If the low bid is recommended to be rejected, OIPI sends a justification letter containing its recommendation and all bids back to the RR for a new recommendation. If IDOT OIPI concurs with the RR's initial or subsequent recommendation, IDOT OIPI sends the recommended bid to FHWA and requests FHWA's concurrence of the contract award.

14. FHWA concurs in award. IDOT OIPI notifies the RR and issues Notice to Proceed (NTP).
15. The RR awards the contract and signs the construction agreement with the contractor, provided the SRA is fully executed and a NTP has been issued to the RR. IDOT OIPI posts the NTP award with contract amount on the CREATE website per updated www.createprogram.org requirements.
16. Construction begins.

Section 6 CREATE DBE Forms for all Freight Railroad Bid Packages

Attachment 8 of this Phase II Manual contains information and current forms required regarding DBE Policy and Special Provisions, and DBE Utilization and Participation forms. IDOT OIPI will not recognize a firm as being an authorized DBE unless it is on the Illinois United Certification Program (UCP) directory.

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

Section 7 Phase II Report Types

The completion of the Phase II work requires preparation of documents and reports described in this section that convey the accomplishments of Phase II activities. Final Engineering is needed for a Project to create the Plans, Specifications and Estimates required to initiate Phase III activities.

7.1 Right-of-Way (See Attachment 14)

A ROW report will generally consist of preparing detailed plats of survey, legal descriptions, appraisals, and records of negotiations of land purchased to implement CREATE Program rail projects. All land shall be acquired in accordance with the Uniform Act and the current State-approved procedures within the Bureau of Land Acquisition's Policies and Procedures Manual. More specifically, land acquired as part of a CREATE Program rail project will follow the Local Public Agency (LPA) land acquisition procedures developed by IDOT District 1 Bureau of Land Acquisition (see Attachment 14). Within these procedures, the term "Lead Railroad" shall be considered equivalent in meaning to "Local Public Agency" for CREATE Program rail projects. The land to be purchased shall meet the needs identified for the Project and the parcels to be acquired will be identified during the Final Engineering phase of work.

7.2 Final Engineering

Final Engineering consists of completing the necessary design work to take the 30% design (Phase I pre-final schematic and final initial geometrics) to 100% design. Environmental commitments from Phase I shall be incorporated into the design.

7.3 Plans, Specifications and Estimates (PS&E's)

A CREATE Phase II Report generally consists of Plans, Specifications and Estimates (PS&E's) along with additional documentation as agreed upon among the CREATE Implementation Committee. Phase II PS&E's may include railroad track, signal, bridge and related construction work for a single CREATE Project. Draft SRA's may be initiated during PS&E review.

The work included in the PS&E's may be used for construction by Railroad Force Account labor or contracted work, which may or may not be awarded by the RR through competitive bidding. Note, however, that for the same CREATE Project designation (e.g., WA7, EW4, P3, B2), separate Phase II Reports are required for:

- Railroad Force Account work (FA)
- Competitively-Bid contractor work (BD)
- Non-Bid contractor work (NB) – Original to the program, no longer in use.

In the following section, "Phase II Report Numbering System", the method for classifying these three types of work is explained under the "contract type" designation.

Section 8 Phase II Numbering System

Phase II Reports shall be designated using the established CREATE Project naming convention. The naming convention and an example of a CREATE Phase II name is found on the CREATE Phase II and Phase III Flow Chart:

http://www.createprogram.org/linked_files/Phase2-3Flowchart.pdf

This naming convention is used to identify the Phase II Report and to reference the SRA for Bid work, Force Account work, and Right-Of-Way acquisition.

Section 9 Phase II Report Contents

The Phase II Report shall contain the following sections to ensure all the compiled information, design work and estimation of costs are included in understandable and documented terms.

9.1 Cover Page

The Cover Page shall follow the format of the example in Attachment 1 and shall include:

- CREATE Project Number
- Full Project Name
- Project Location
- Lead Railroad
- Plan Number per the naming convention described in Section 8
- Date submitted
- CREATE logo

9.2 Table of Contents

- Project Plan Sheets
- Form 3.1 for the total Project and the PS&E package
- Project Specifications and/or Railroad Standards
- Special Provisions (List of Support Services, Required Contract Provisions for Federal Aid Projects, Domestic Steel Requirement, and Compliance with Environmental Commitments)
- IDOT District 1 Bureau of Land Acquisition ROW Reviews and Certifications
- Tech Memo(s)

9.3 Signature Page

The Signature Page shall follow the example format in Attachment 2 and include the same information as on the Cover Page as well as the State Rail Agreement. The Project description must match the Project title and description of work.

9.4 CREATE Phase II PS&E 100% Design Cost Form 3.1

A sample Form 3.1 is included as Attachment 3. Note the following instructions and information:

- Enter the applicable information in the shaded portions of the form.
- Enter the projected duration (years and months) of Phase III (construction) and include the anticipated Project Completion Date.
- The inflation rate shall be 4.50% or as approved by the CREATE Partners.
- Enter source for the cost estimate (e.g. engineer's estimate or railroad's estimate) and the date of the cost estimate.
- Reference the raw cost estimate.
- The "Confidence of Estimate" contingency shall be 10% or as approved by the CREATE Partners.
- The "Project Management Reserve" (PMR) shall be 5% or as approved by the CREATE Partners.
- Construction Management is performed by the Railroad, a consultant or a contractor hired to perform these services. This can include Railroad flagging by Railroad forces, a consultant or contractor hired to perform these services. Railroad flagging is considered to be Railroad Force Account work, as approved by the CREATE Partners.
- The Phase III cost typically shows the RR's request for Federal funds at a ratio of Federal, State and Railroad participation. In some cases, in order to proceed with construction without waiting for Federal funding, the CREATE Partners may desire to fund 100% of the Phase III cost with local funds and possibly obtain a Federal portion at a later date (Advanced Construction (AC)).

9.5 Raw Cost Estimate & Summary Estimate Sheet

The raw cost estimate shall be prepared using the methodology of the RR. Include the raw cost estimate in the Phase II documents after Form 3.1. A summary pre-final cost estimate sheet will be compiled and submitted along with the raw cost estimate. This summary sheet will include Total Labor costs, Total Material costs, Total Support Services costs and Total Other costs, such as railroad

contracted work, utility relocation, and work required to be performed by local authorities having jurisdiction. All Phase II final 3.1 Forms and cost estimates must be approved by the CREATE Partners.

9.6 Schematic

If the Project work differs in any way from the work presented in the Phase I Report, provide a pre-final track schematic of the proposed Project in accordance with the schematic requirements in the IDOT CREATE Phase I Manual. Although preferred, a schematic is not required in the Phase II Report if the Project work is the same as shown in the Phase I Report. The pre-final schematic must be approved by CTCO and the CREATE Partners during Phase I. In similar fashion, any changed schematic must be approved by CTCO and the CREATE Partners for use in the PS&E.

9.7 Plans, Specifications and Estimates (PS&E's)

The Phase II PS&E shall depict all the “to be constructed” aspects of the Project at the 100% (final) level of design. Note that Phase II PS&E Reports are not Bid and/or construction documents. The PS&E contains documents including drawings and detailed specifications and forms needed to prepare construction documents. The RR may choose to use the Phase II PS&E's in some form as construction documents; however, such use is solely determined by the RR aside from the CREATE Phase II approval process.

Plans shall be prepared using the design standards and practices of the RR. Roadway work must conform to IDOT standards. The Plan and Profile shall be based on the final initial geometrics shown in the Phase I Report. Include a cover sheet at the front of the plan set with a Professional Engineer's seal and signature.

Each set of Phase II PS&E's shall contain only one type of work, as described in the Phase II and III Flow Chart, and repeated below:

- FE - Final Engineering for PS&E preparation (Phase II work)
- FA - Force Account work performed by railroad forces
- BD - Biddable work performed by the lowest qualified bidder
- NB - Non-Bid work performed by a pre-existing contractor (No longer used)
- ROW - Right-Of-Way purchase (Phase II work)

Work of more than one type may be included in the PS&E's, but it must be clearly distinguished as not being included in the documents through means such as different CADD levels, shading, hatching, callouts, or some other method.

Include the following on the Phase II plans, along with the “to be constructed” elements of the Project:

- Special waste footprints
- ESR limits
- Soil boring locations
- Construction staging information

Signal Design

Signal design shall follow the RR standards and plan preparation requirements.

Specifications

Written construction specifications for the Phase II document may be submitted either in full or as a Table of Contents only, which follow the RR's standards.

9.8 Discrepancies from Phase I Design

The RR is responsible to identify any changes in the Phase II design from the Phase I design in the following areas:

- Plan and Profile
- Purpose and Need
- Project limits, including anticipated construction limits
- Schedule and/or Cost
- Other design changes or scope modifications that could, in the opinion of IDOT OIPI and FHWA, alter the analysis or conclusions contained in the previously approved environmental document

The RR shall provide an explanation of any such changes as a section in the Phase II Report documents. The Phase I Form will indicate significant items that need to be tracked and addressed in the Phase II PS&E. A Tech Memo is required if determined by IDOT OIPI and FHWA for any substantial deviation from approved Phase I scope of work.

9.9 Invitation to Bid/Bid Package(s)

CREATE procedures for contracting Phase III work with the lowest qualified bidder is included in Phase II and III Flow Chart. A standard Invitation to Bid document shall be used for all CREATE BD Projects (but not needed for FA PS&E's). Attachment 4 contains the standard Invitation to Bid.

The CREATE website contains archived actual Invitations to Bid, which may be informative to Phase II Report preparers. These samples can be found at:

<http://www.createprogram.org/bid.htm>

Pre-Final Bid packages without dates must be included in the PS&E Report for review and approval. The RR may select to incorporate multiple Bid packages in the same PS&E Report (i.e., Grading & Bridge).

9.10 Requirements for Federal Aid Projects

Required contract provisions for CREATE Force Account and non-Force Account Projects are shown in Attachment 5 and Attachment 6.

9.11 Prevailing Wages

Illinois Department of Labor requirements are to be followed for CREATE Projects. The standard language for these requirements to be included in the Phase II Report is contained in Attachment 7. Federal Aid Projects require compliance with Davis Bacon Act wage rates for contractor work and Railway Labor Act for Railroad work.

9.12 Special Provision for DBE

The DBE goal will be established by the Illinois Department of Transportation prior to submittal of Phase II PS&E's. The DBE Policy and the DBE Special Provision language are shown in Attachment 8. Blank DBE forms to be included in all Bid packages are provided in Attachment 8 as well.

9.13 Workers' Compensation Insurance Requirements

Include Worker's Compensation Insurance requirements in the Phase II Report, as described in Attachment 9.

9.14 Domestic Steel Requirement

The Domestic Steel Requirement language, as shown in Attachment 10, shall be included in the Phase II Report unless the RR has submitted a waiver for exemption. Include the waiver in the Phase II documents, if one has been submitted. Also, see Section 9.18.

9.15 Retainage

Bid package retainage language should be included in the Phase II Report, as shown in Attachment 11.

9.16 Environmental Commitments

The Phase II Report shall provide a list of Environmental Commitments for the Project per the Categorical Exclusion, Environmental Class of Action Determination (ECAD), Environmental Assessment (EA), or Environmental Impact Statement (EIS) prepared in Phase I. Note any changes in commitments and include documentation of the approved changes, if any have been obtained.

9.17 Debarment and Lobbying

Bid package language for Debarment and Lobbying must require the respondent to include proper certifications and forms as shown in Attachment 12. This is included as part of the U.S. government's regulations and applies to Prime and Sub recipients.

9.18 Buy America and Buy American

Bid package language requires the respondent to confirm compliance with Buy America and/or Buy American provisions tied to Project fund source (See Attachment 13).

9.19 Right-of-Way Acquisitions, Permanent and/or Temporary Easements

Within the Phase II Report, provide a ROW list and up-to-date exhibits of acquired ROW and

easements needed for the Project construction. All property acquisition must be completed prior to beginning Phase III work and must have been secured in accordance with the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (Title 49 – Code of Federal Regulations Part 24), as amended, also known as the “Uniform Act”. As indicated in Attachment 14, any right of way acquisition must be certified by the IDOT District 1 Bureau of Land Acquisition. This certification should be included as part of the Phase II Report.

Section 10 IDOT OIPI PS&E Review Checklist

IDOT OIPI will use the Review Checklist below to verify that the Phase II PS&E's have been prepared in compliance with the specific procedures established for the CREATE Program. Phase II PS&E preparers should satisfy the conditions in the checklist, as appropriate, prior to final submission. Note that the technical accuracy of the PS&E's is the responsibility of the preparer and is not addressed in this checklist.

1. Right of Way limits shown; compare to Phase I Report
2. IDOT District 1 Bureau of Land Acquisition ROW Review and Certification
3. ESR Boundary with stations shown; compare with Phase I Report
4. PESA/PSI areas shown
5. Utility Relocations / Protection Areas
6. Railroad Signal locations within 100' from initial geometrics or as otherwise specified in Phase I Report
7. Road Closures? If so, then are they shown per the Street Closure Report(s) in the Phase I Report? Are Maintenance of Traffic (MOT) drawings and specifications included for road closures?
8. Compare PTS&L's to Phase I
9. Compare BCR(s) to Phase I
10. If any public road is crossed, send plans to DOT.DI.BLRS@Illinois.gov IDOT District 1, Bureau of Local Roads and Streets
11. Determine DBE Goal (4 steps)
 - a. The RR sends raw cost summary to IDOT OIPI
 - b. IDOT OIPI and IDOT BDE establish DBE goal
 - c. IDOT OIPI sends DBE goal to the RR
 - d. Verify DBE goal in final PS&E's is correct
12. Draft Bid Advertisement
13. Prevailing Wage Bid
14. Buy America Language and Waivers (if applicable) – include Debarment and Lobbying Certification forms
15. Check consultant use and selection
16. Specify if water restrictions are required
17. Compliance with Environmental Commitments (separate checklist for each Project as required, CREATE Program Environmental Commitment Tracking Form)
18. DBE Bid language with goals and forms
19. Form 3.1 with SRA request
20. CADD file of final geometrics to compare with Phase 1

21. Special instructions for retainage
22. DBE participation and utilization forms and IDOT OIPI determination
23. NTP includes new Form 3.1 with bid cost and FHWA concurrence letter

Section 11 Contracting for Utility Relocation/Protection (Figure 2)

Refer to Figure 2 on the following page regarding Utility Relocation and Protection.

IDOT Action

RR Action

FHWA Action

BDE Action

Utility Company Action

Implementation Committee Action

CTCO Action

Management Committee Action

End of Phase

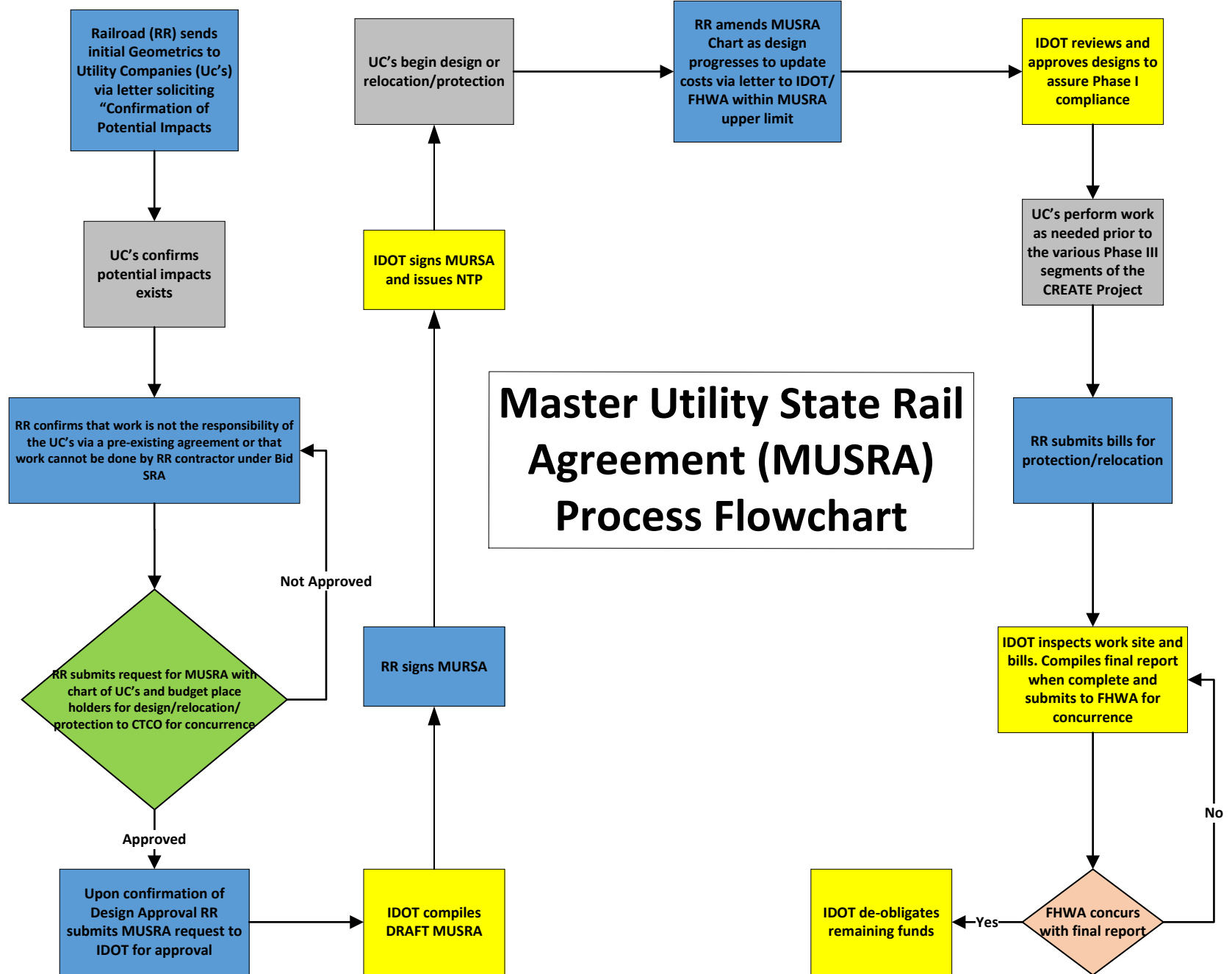


Figure 2 – Master Utility State Rail Agreement (MUSRA)

Attachment 1

Sample Cover Page and Table of Contents



PHASE II
PLANS, SPECIFICATIONS &
ESTIMATE (PS&E)
CREATE PROGRAM
PROJECT WA4
CONSTRUCTION CONTRACT
PLAN WA4-BNSF-TSB-003-A-BD

WA4

PANHANDLE CONNECTION

Earthwork, Grading, Bridges and Retaining Walls

Chicago, Illinois

Submittal Date – April 3, 2013





Table of Contents

Signature Page

CREATE Phase II PS&E 100% Design Cost Form 3.1

Proposed Schematic

Project Plans for Panhandle Connection

Cover

General Notes, Site Plan, Quantities (2 Sheets)

Typical Sections

Plan & Profile

Details

Cross Sections

Bridge Plans

Retaining Wall Plans

Project Manual and Special Conditions

Standard Construction Specifications

Invitation to Bid

Government Regulations

Environmental Commitments

WA4 PANHANDLE CONNECTION

Chicago, Illinois

Submittal Date – April 3, 2013



Attachment 2
Sample Signature Page



**CREATE PROGRAM
PROJECT WA4**

**PHASE II
PLANS, SPECIFICATIONS & ESTIMATES (PS&E)**

Plan Number WA4-BNSF-TSB-004-Z-FA
(Paid for under State Rail Agreement D-20-009-10)

**Panhandle Connection
Chicago, Cook County, Illinois**

Install new tracks and signals and reconfigure the Interlockings at Western Ave. CP 21,
CP 31 and CP 46.

Prepared by
BNSF RAILWAY

April 17, 2013

**BNSF Railroad
PS& E Approval**



Director Engineering 5/23/13
Date

**IDOT Bureau of Railroads
PS&E Approval**



Chief, Railroad Engineering 5/23/13
Date

**Federal Highway Administration
PS&E Approval**



FHWA Engineering Project Manager 5/23/13
Date

Attachment 3

Sample CREATE Phase II PS&E 100% Design

Cost Form 3.1

CREATE Design Approval Cost Estimate and Schedule Form 3.1

CREATE Project Number	WA4-BNSF-TSB-003-B-BID
Prime Railroad	BNSF
Date of Report	March 1, 2013

Project Schedule Section

Notes

Year Current Estimate was compiled	2012
Begin Phase III (month/year)	Jan-13
End Phase III (month/year)	Jan-15
Total duration of Phase III	2 Year(s) 0 Month(s)
Inflation rate	4.00%

Project Cost Estimate Section

Costs

Notes

Phase I Costs					
Part A (Environmental)	IDOT		PTB # 143-026 Job No. 30-017-07 PTB 143/26 P-30-017-07 3-party funding		
Part A (Environmental)	RR/AAR				
Part A	CDOT				
Part B	IDOT				
Part B	RR/AAR				
Part B (Preliminary Engineering)	RR Match				
Part B (Preliminary Engineering)	FHWA				
Part B	CDOT				
Total Phase I Costs				\$0	

Phase II Costs			
PSI/Tech Memo	IDOT		PTB # 143-026 Job No. 30-017-07 PTB 143/26 P-30-017-07 3-party funding HDR under IDOT Contract PTB 143-026
PSI/Tech Memo	RR/AAR		
ECAD Tech Memo	RR/AAR		
PSI/Tech Memo	CDOT		
PS&E Costs	IDOT		
PS&E Costs	RR/AAR		
PS&E Costs	RR Match		
PS&E Costs	FHWA		
PS&E Costs	CDOT		
Utility Negotiation Costs			
Total Phase II Costs		\$0	

ROW Costs			
ROW	IDOT		No ROW required
ROW	RR/AAR		
ROW	RR In Kind		
ROW	FHWA		
ROW			
ROW	CDOT		
Total ROW Costs		\$0	

Phase III Costs					
Construction Estimate	\$14,559,768				Estimate Based on 100% Final Design Prepared by Hanson, BNSF, CSX & CN
"Confidence of Estimate" contingency used	10.00%				
Total Current Construction Estimate	\$16,015,745				
2009 Construction Costs With Inflation	% of Total		\$0		
2010 Construction Costs With Inflation	% of Total		\$0		
2011 Construction Costs With Inflation	% of Total	0.00%	\$0		
2013 Construction Costs With Inflation	% of Total	50.00%	\$8,328,187		
2014 Construction Costs With Inflation	% of Total	50.00%	\$8,661,315		
	100.00%		\$16,989,502		
Construction Management Costs	\$16,989,502	3.32%	\$564,051		
Project's Management Reserve	\$16,989,502	5.00%	\$849,475		
Total Phase III Costs			\$18,403,029		
Total Project Cost			\$18,403,029		

Attachment 4

**Sample CREATE Project Invitation to Bid Advertisement,
Certification of Publication, and News Services**



**BID ADVERTISEMENT
WA4-BNSF-TSB-003-A-BD**

Invitation to bid on the CREATE WA4 Earthwork, Grading, Bridges and Retaining Walls Project in Chicago, IL (Cook County) Burlington Northern and Santa Fe Railway (Panhandle Connection, Chicago Subdivision Mile Post 4.05 to Chillicothe Subdivision, Mile Post 4.9)

Generally the project consists of track roadbed construction and drainage for track construction and bridge and retaining wall repair and construction to add a rail connection between BNSF Main Line on the Chicago Sub and the Chillicothe Sub. Grading includes excavation for new track and placement of subballast for new track to be constructed by the BNSF.

Additionally, this project will be funded in part by federal and/or state funds. Therefore, bidder/consultant will be required to comply with certain State and Federal policies, such as Buy America, Equal Employment Opportunity, Disadvantage Business Enterprise participation (20%) and Davis-Bacon prevailing wage rates. Insurance requirements (subject to change) are: Commercial General Liability combined single limit \$5M per occurrence and \$10M aggregate, Automobile Liability combined single limit \$1M per occurrence, Employers' Liability Insurance, Builder's Risk Insurance; Workers' Compensation Insurance. BNSF requires that the railroad be named as an additional insured. Insurance coverage cannot be denied within 50 feet of a railroad. Health and Safety Action Plan is required. BNSF requires that a project manager be committed for the duration of a job. Contractor safety orientation training and employee participation in e8 RailSafe program is required. All interested bidders attending the prebid meeting must provide and wear railroad approved PPE equipment including but not limited to eye protection, hard hats, high visibility vests and lace up work boots with toe protection.

DBE requirement on contracting is 20 percent.

A mandatory pre-bid meeting and site inspection is scheduled for 9:00 am (CST) on Wednesday, May 1, 2013 at the following location:

**BNSF 2nd Floor Conference Room
3611 W. 38th Street, Chicago, Illinois 60632 (Enter Yard on 41st Street off Pulaski)**

A bid package of all contract documents may be obtained from:
Andrew A. Nicol, P.E., S.E. (anicol@hansoninc.com)
Hanson Professional Services Inc.
815 Commerce Drive, Suite 200
Oak Brook, Illinois 60523

Additionally, bids will be received for this project until 4:00 pm (Chicago time) On May 22, 2013, and then will be publically opened and read aloud (call In number available upon request). Mailed BIDS must be delivered by the time Specified above to:

Andrew A. Nicol, P.E., S.E.
Hanson Professional Services Inc.
815 Commerce Drive, Suite 200
Oak Brook, Illinois 60523

For more information on CREATE go to <http://www.createprogram.org/>

217. Legals

CREATE WA4 Construction Services Advertisement

Invitation to bid on the CREATE WA4 Earthwork, Grading, Bridges and Retaining Walls Project in Chicago, IL (Cook County) Burlington Northern and Santa Fe Railway (Panhandle Connection, Chicago Subdivision Mile Post 4.05 to Chillicothe Subdivision, Mile Post 4.9).

Generally the project consists of track roadbed construction and drainage for track construction and bridge and retaining wall repair and construction to add a rail connection between BNSF Main Line on the Chicago Sub and the Chillicothe Sub. Grading includes excavation for new track and placement of subballast for new track to be constructed by the BNSF.

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217. Legals

cent.

A mandatory pre-bid meeting and site inspection is scheduled for 9:00 am (CST) on Friday, June 28, 2013 at the following location: BNSF 2nd Floor Conference Room 3611 W. 38th Street, Chicago, Illinois 60632 (Enter Yard on 41st Street off Pulaski)

A bid package of all contract documents may be obtained from:

Andrew A. Nicol, P.E., S.E. (anicol@hanson-inc.com) Hanson Professional Services Inc. 815 Commerce Drive, Suite 200 Oak Brook, Illinois 60523

Additionally, bids will be received for this project until 4:00 pm (Chicago time) on July 29, 2013, and then will be publicly opened and read aloud (call in number available upon request). Mailed BIDS must be delivered by the time specified above to:

Andrew A. Nicol, P.E., S.E. Hanson Professional Services Inc. 815 Commerce Drive, Suite 200 Oak Brook, Illinois 60523

For more information on CREATE go to http://www.createprogram.org/

5/22/2013

BREEZE PRINTING COMPANY

A Corporation organized and existing under and by virtue of the laws of the State of Illinois does HEREBY CERTIFY, that it is the publisher

OF THE

Breeze-Courier

That said BREEZE-COURIER is a secular newspaper and has been published daily in the City of Taylorville, County of Christian and State of Illinois, continuously for more than six months prior to, on and since the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said County and State.

That a notice, of which the annexed printed slip is a true copy, was published 1 times in said Breeze-Courier namely once each week for 1 successive weeks, and that the first publication of said notice as aforesaid was made in said newspaper dated and published on the 22 day of May, A.D. 2013 and the last publication thereof was made in said newspaper dated and published on the 22 day of May, A.D. 2013.

IN WITNESS WHEREOF, the undersigned, the said BREEZE PRINTING COMPANY has caused this certificate to be signed by MARYLEE COOPER RASAR, its President, this 22 day of May, A.D. 2013.

BREEZE PRINTING COMPANY

By Marylee Rasar, President.

(Publication Fee \$31.80)



435 N. Michigan Ave. Chicago IL 60611 312-527-8400

CERTIFICATE OF PUBLICATION

Tribune Company hereby certifies that it is the publisher of the Tribune Company; that Hoy is a Spanish language newspaper of general circulation, published weekly in the City of Chicago, County of Cook and State of Illinois; that Hoy has been so published continuously for more than one year prior to the date of first publication mentioned below and is further a newspaper as defined in Ill. Rev. Stat. Ch. 100, SS 5 & 10; that the undersigned is the duly authorized Agent of the Tribune Company to execute this certificate on its behalf; and that a notice of which the annexed is a true copy was printed and published in said newspaper 1

time(s) and on the following date:

BNSF Project Engineer – 5/22/13

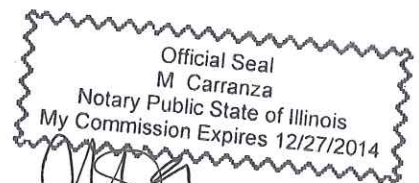
Executed at Chicago, Illinois this 22nd

Day of May 2013

CHICAGO TRIBUNE COMPANY

By _____

A handwritten signature in black ink is written over a horizontal line.



Invitation to bid on the CREATE WA4 Earthwork, Grading, Bridges and Retaining Walls Project in Chicago, IL (Cook County) Burlington Northern and Santa Fe Railway (Panhandle Connection, Chicago Subdivision Mile Post 4.05 to Chillicothe Subdivision, Mile Post 4.9).

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Hanson Professional Services Inc.
815 Commerce Drive, Suite 200
Oak Brook, Illinois 60523

For more information on CREATE go to <http://www.createprogram.org/>

BNSF RAILWAY
CREATE BID PROJ

ADORDERNUMBER: 0000566012-01

PO NUMBER: CREATE BID PROJ

AMOUNT: \$1,313.40

NO OF AFFIDAVITS: 2

CREATE WA4 Construction Services Advertisement

Invitation to bid on the CREATE WA4 Earthwork, Grading, Bridges and Retaining Walls Project in Chicago, IL (Cook County) Burlington Northern and Santa Fe Railway (Panhandle Connection, Chicago Subdivision Mile Post 4.05 to Chillicothe Subdivision, Mile Post 4.9).

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For more information on CREATE go to:
<http://www.createprogram.org/>
Publish: 05/22/2013 566012

Sun Times Media Chicago Sun-Times Certificate of Publication

State of Illinois - County of Cook

Chicago Sun-Times, does hereby certify it has published the attached advertisements in the following secular newspapers. All newspapers meet Illinois Compiled Statute requirements for publication of Notices per Chapter 715 ILCS 5/0.01 et seq. R.S. 1874, P728 Sec 1, EFF. July 1, 1874. Amended by Laws 1959, P1494, EFF. July 17, 1959. Formerly Ill. Rev. Stat. 1991, CH100, Pl.

Note: Notice appeared in the following checked positions.

PUBLICATION DATE(S): 05/22/2013

Chicago Sun-Times

IN WITNESS WHEREOF, the undersigned, being duly authorized, has caused this Certificate to be signed and notarized

By



David Fontechia
Account Manager - Public Legal Notices

Subscribed and sworn to before me this 22nd Day of May 2013 A.D.

BNSF RAILWAY
3811 W 38TH STREET
CHICAGO, IL 60632

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We work as a team to apply the right combination of tools to address all of your communications needs.

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The Press Summary is a daily news clip service that includes news articles, from 30 major daily newspapers. Subscriptions to the Press Summary are available to all branches of state government.

Monthly rates are \$35 for one email address and \$20 per address for multiple addresses billed to the same account. Please [contact us](#) to subscribe.

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State Newspaper

For all State Agencies, Elected Officials, Boards and Commissions whose requirements are procured through Central Management Services, effective July 1, 2010, the Breeze Courier published by Breeze Printing Co. has been selected the "Official State Newspaper" for the period July 1, 2010 through June 30, 2015.

The Breeze Courier is published six (6) days a week. Saturday is the only day not published.

Copy and billing for advertisement will be direct between the agency and the Breeze Printing Co.

Rates

- \$.20 – per line per insertion
- \$96.40 – annual subscription

In most cases, copy must be received by mail three (3) days before the first insertion date. In emergency cases, copy for such advertisements may be placed by fax machine, or e-mail and must be received by 10:00 a.m. prior to the day of the first insertion. The State Agency transmitting the fax must call the Breeze Printing Co. immediately at 217-824-2233 to verify receipt of the transmission.

Note: Advertisements should be telefaxed to the Breeze Printing Co. only in emergency cases.

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Breeze Printing Co.
Tracy Marshall
Subscriptions: 217-824-2233
[E-mail Subscriptions](#)
Legal Notices Department Telefax: 217-824-2026
[E-mail Legal Notices Department](#)

Chicago Sun-Times
350 N. Orleans St., 10th Floor
Chicago, IL 60654
312-321-3000

Tim Knight, CEO

The Chicago Sun-Times is happy to make these e-mail addresses and phone numbers available. No attachments, please.

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- **E-mail:** customerservice@suntimes.com
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Attachment 5

Contract Provisions for Federal Aid Construction

Contracts for CREATE Program

Contract Type: Force Account Projects

**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID FUNDED CONSTRUCTION
FOR CREATE PROGRAM FORCE ACCOUNT WORK**

When the State and Railroad perform CREATE work under the Railroad Force Account basis, certain provisions of FHWA 1273 do not apply because Railroads fall under separate Federal Standards and Requirements including the Railway Labor Act, the Federal Railway Administration and Surface Transportation Board. Therefore, FHWA 1273 – Revised May 1, 2012 is modified to exclude the following five sections:

Section IV – Davis-Bacon and Related Act Provisions do not apply to Railroad Force Account work. Railroads comply with the Railway Labor Act provisions for labor.

Section V – Contract Work Hours and Safety Standards Act Provisions do not apply to Railroad Force Account work. Railroads comply with the Railway Labor Act provisions for labor.

Section VI – Subletting or Assigning the Contract Provisions do not apply to Railroad Force Account work. Railroads comply with the Railway Labor Act provisions for labor.

Section IX – Implementation of Clean Air Act and Federal Water Pollution Control Act Provisions do not apply to Railroad Force Account work. Railroads comply with the Railway Labor Act provisions for labor and will perform and lead all work in-house.

Section X – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Provisions do not apply to Railroad Force Account work. Railroads comply with the Railway Labor Act provisions for labor and will perform and lead all work in-house.

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Federal Contractor Registry website (<https://www.federalcontractorregistry.com/>), which is compiled by the General Services Administration.

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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

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

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

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

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

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

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

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

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

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

Attachment 6

Contract Provisions for Federal Aid Construction

Contracts for CREATE Program

Contract Type: Non-Force Account Projects

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Federal Contractor Registry website (<http://federalcontractorregistry.com>), which is compiled by the General Services Administration.

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

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

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

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

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

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

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

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

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

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

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

Attachment 7

**Illinois Department of Labor
Requirements for Prevailing Wages**

ILLINOIS DEPARTMENT OF LABOR PREVAILING WAGES

As required by Prevailing Wage Act (820 ILCS 130/0.01, et seq.) not less than the rates of wages ascertained by the Illinois Department of Labor and as revised during the performance of a Contract shall be paid to all laborers, workers and mechanics performing work under the Contract. Post the scale of wages in a prominent and easily accessible place at the site of work. If the Illinois Department of Labor revises the prevailing rates of wages to be paid as listed in the specification of rates, the contractor shall post the revised rates of wages and shall pay not less than the revised rates of wages. Current wage rate information shall be obtained by visiting the Illinois Department of Labor web site at <http://www.state.il.us/agency/idol/> or by calling 312-793-2814. It is the responsibility of the contractor to review the rates applicable to the work of the contract at regular intervals in order to insure the timely payment of current rates. Provision of this information to the contractor by means of the Illinois Department of Labor web site satisfies the notification of revisions by the Department to the contractor pursuant to the Act, and the contractor agrees that no additional notice is required. The contractor shall notify each of its subcontractors of the revised rates of wages.

Attachment 8

**Disadvantaged Business Enterprise (DBE) Policy
And Special Provision and DBE Utilization and Participation**

State of Illinois
Department of Transportation

SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

- I. FEDERAL OBLIGATION: The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 CFR part 26 apply to this contract concerning the utilization of disadvantaged business enterprises. This Special Provision will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. For the purposes of this Special Provision, a disadvantaged business enterprise (DBE) means a business certified by the Department in accordance with the requirements of 49 CFR part 26 and listed in the DBE Directory or most recent addendum.

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

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of federally-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.

- III. OVERALL GOAL SET FOR THE DEPARTMENT: As a requirement of compliance with 49 CFR part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal is 22.77% of all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a good faith effort to achieve this goal. The dollar amount paid to all approved DBE firms performing work called for in this contract is eligible to be credited toward fulfillment of the Department's overall goal.

- IV. CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR: This contract includes a specific DBE utilization goal established by the Department. The goal has been included because the Department has determined that the work of this contract has subcontracting opportunities that may be suitable for performance by DBE companies. This determination is based on an assessment of the type of work, the location of the work, and the availability of DBE companies to do a part of the work. The assessment indicates that, in the absence of unlawful discrimination, and in an arena of fair and open competition, DBE companies can be expected to perform % of the work. This percentage is set as the DBE participation goal for this contract. Consequently, in addition to the other award criteria established for this contract, the Department will award this contract to a bidder who makes a good faith effort to meet this goal of DBE participation in the performance of the work. A bidder makes a good faith effort for award consideration if either of the following is done in accordance with the procedures set forth in this Special Provision:
 - A. The bidder documents that firmly committed DBE participation has been obtained to meet the goal; or
 - B. The bidder documents that a good faith effort has been made to meet the goal, even though the effort did not succeed in obtaining enough DBE participation to meet the goal.

- V. DBE LOCATOR REFERENCES: Bidders may consult the DBE Directory as a reference source for DBE companies certified by the Department. In addition, the Department maintains a letting and item specific DBE locator information system whereby DBE companies can register their interest in providing quotes on particular bid items advertised for letting. Information concerning DBE companies willing to quote work for particular contracts may be obtained by contacting the Department's Bureau of Small Business Enterprises at telephone number (217)785-4611, or by visiting the Department's web site at www.dot.state.il.us.
- VI. BIDDING PROCEDURES: Compliance with the bidding procedures of this Special Provision is required prior to the award of the contract and the failure of the as-read low bidder to comply will render the bid nonresponsive.
- A. In order to assure the timely award of the contract, the as-read low bidder must submit a Disadvantaged Business Utilization Plan on Department form SBE 2026 within seven (7) working days after the date of letting. To meet the seven (7) day requirement, the bidder may send the Plan by certified mail or delivery service within the seven (7) working day period. If a question arises concerning the mailing date of a Plan, the mailing date will be established by the U.S. Postal Service postmark on the original certified mail receipt from the U.S. Postal Service or the receipt issued by a delivery service. It is the responsibility of the as-read low bidder to ensure that the postmark or receipt date is affixed within the seven (7) working days if the bidder intends to rely upon mailing or delivery to satisfy the submission day requirement. The Plan is to be submitted to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764 (Telefax: (217) 785-1524). It is the responsibility of the bidder to obtain confirmation of telefax delivery. The Department will not accept a Utilization Plan if it does not meet the seven (7) day submittal requirement, and the bid will be declared nonresponsive. In the event the bid is declared nonresponsive due to a failure to submit a Plan or failure to comply with the bidding procedures set forth herein, the Department may elect to cause the forfeiture of the penal sum of the bidder's proposal guaranty, and may deny authorization to bid the project if re-advertised for bids. The Department reserves the right to invite any other bidder to submit a Utilization Plan at any time for award consideration or to extend the time for award.
- B. The Utilization Plan shall indicate that the bidder either has obtained sufficient DBE participation commitments to meet the contract goal or has not obtained enough DBE participation commitments in spite of a good faith effort to meet the goal. The Utilization Plan shall further provide the name, telephone number and telefax number of a responsible official of the bidder designated for purposes of notification of plan approval or disapproval under the procedures of this Special Provision.
- C. The Utilization Plan shall include a DBE Participation Commitment Statement, Department form SBE 2025, for each DBE proposed for the performance of work to achieve the contract goal. The signatures on these forms must be original signatures. All elements of information indicated on the said form shall be provided, including but not limited to the following:
1. The name and address of each DBE to be used;
 2. A description, including pay item numbers, of the commercially useful work to be done by each DBE;
 3. The price to be paid to each DBE for the identified work specifically stating the quantity, unit price and total subcontract price for the work to be completed by the DBE. If partial pay items are to be performed by the DBE, indicate the portion of each item, a unit price where appropriate and the subcontract price amount;
 4. A commitment statement signed by the bidder and each DBE evidencing availability and intent to perform commercially useful work on the project; and
 5. If the bidder is a joint venture comprised of DBE firms and non-DBE firms, the plan must also include a clear identification of the portion of the work to be performed by the DBE partner(s).

D. The contract will not be awarded until the Utilization Plan submitted by the bidder is approved. The Utilization Plan will be approved by the Department if the Plan commits sufficient commercially useful DBE work performance to meet the contract goal. The Utilization Plan will not be approved by the Department if the Plan does not commit sufficient DBE performance to meet the contract goal unless the bidder documents that it made a good faith effort to meet the goal. The good faith procedures of Section VIII of this special provision apply. If the Utilization Plan is not approved because it is deficient in a technical matter, unless waived by the Department, the bidder will be notified and will be allowed no less than a five (5) working day period in order to cure the deficiency.

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

A. DBE as the Contractor: 100% goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goals.

B. DBE as a joint venture Contractor: 100% goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.

C. DBE as a subcontractor: 100% goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the DBE goal.

D. DBE as a trucker: 100% goal credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. Goal credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company.

E. DBE as a material supplier:

1. 60% goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
2. 100% goal credit for the cost of materials or supplies obtained from a DBE manufacturer.
3. 100% credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.

VIII. GOOD FAITH EFFORT PROCEDURES: If the bidder cannot obtain sufficient DBE commitments to meet the contract goal, the bidder must document in the Utilization Plan the good faith efforts made in the attempt to meet the goal. This means that the bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those which could reasonably be expected to obtain sufficient DBE participation. The Department will consider the quality, quantity and intensity of the kinds of efforts that the bidder has made. Mere *pro forma* efforts are not good faith efforts; rather, the bidder is expected to have taken those efforts that would be reasonably expected of a bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

- A. The following is a list of types of action that the Department will consider as part of the evaluation of the bidder's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases, and will be considered by the Department.
1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBE companies that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE companies to respond to the solicitation. The bidder must determine with certainty if the DBE companies are interested by taking appropriate steps to follow up initial solicitations.
 2. Selecting portions of the work to be performed by DBE companies in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 3. Providing interested DBE companies with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 4. (a) Negotiating in good faith with interested DBE companies. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE companies that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE companies to perform the work.

(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE companies is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE companies if the price difference is excessive or unreasonable.
 5. Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 6. Making efforts to assist interested DBE companies in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 7. Making efforts to assist interested DBE companies in obtaining necessary equipment, supplies, materials, or related assistance or services.
 8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE companies.
- B. If the Department determines that the Contractor has made a good faith effort to secure the work commitment of DBE companies to meet the contract goal, the Department will award the contract provided that it is otherwise eligible for award. If the Department determines that a good faith effort has not been made, the Department will notify the bidder of that preliminary determination by contacting the responsible company official designated in the Utilization Plan. The preliminary determination shall include a statement of reasons why good faith efforts have not been found, and may include additional good faith efforts that the bidder could take. The notification will

designate a five (5) working day period during which the bidder shall take additional efforts. The bidder is not limited by a statement of additional efforts, but may take other action beyond any stated additional efforts in order to obtain additional DBE commitments. The bidder shall submit an amended Utilization Plan if additional DBE commitments to meet the contract goal are secured. If additional DBE commitments sufficient to meet the contract goal are not secured, the bidder shall report the final good faith efforts made in the time allotted. All additional efforts taken by the bidder will be considered as part of the bidder's good faith efforts. If the bidder is not able to meet the goal after taking additional efforts, the Department will make a pre-final determination of the good faith efforts of the bidder and will notify the designated responsible company official of the reasons for an adverse determination.

- C. The bidder may request administrative reconsideration of a pre-final determination adverse to the bidder within the five (5) working days after the notification date of the determination by delivering the request to the Department of Transportation, Division of Aeronautics, 1 Langhorne Bond Drive, Capital Airport, Springfield, IL 62707-8415 (Telefax: 217-785-4533). Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The pre-final determination shall become final if a request is not made and delivered. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal. In addition, the request shall be considered a consent by the bidder to extend the time for award. The request will be forwarded to the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person in order to consider all issues of whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten (10) working days after receipt of the request for reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid nonresponsive.

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

- A. No amendment to the Utilization Plan may be made without prior written approval from the Division of Aeronautics. All requests for amendment to the Utilization Plan shall be submitted to the Department of Transportation, Division of Aeronautics, 1 Langhorne Bond Drive, Capital Airport, Springfield, IL 62707-8415. Telephone number (217) 785-8514. Telefax number (217) 785-4533.
- B. All work indicated for performance by an approved DBE shall be performed, managed and supervised by the DBE executing the Participation Statement. The Contractor shall not terminate for convenience a DBE listed in the Utilization Plan and then perform the work of the terminated DBE with its own forces, those of an affiliate or those of another subcontractor, whether DBE or not, without first obtaining the written consent of the Bureau of Small Business Enterprises to amend the Utilization Plan. If a DBE listed in the Utilization Plan is terminated for reasons other than convenience, or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another DBE to substitute for the terminated DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, but only to the extent needed to meet the contract goal or the amended contract goal. The Contractor shall notify the Division of Aeronautics of any termination for reasons other than convenience, and shall obtain approval for inclusion of the substitute DBE in the Utilization Plan. If good faith efforts following a termination of a DBE for cause are not successful, the Contractor shall contact the Division and provide a full accounting of the efforts undertaken to obtain substitute DBE participation. The Division will evaluate the good faith efforts in light of all circumstances surrounding the performance status of the contract, and determine whether the contract goal should be amended.

- C. The Contractor shall maintain a record of payments for work performed to the DBE participants. The records shall be made available to the Department for inspection upon request. After the performance of the final item of work or delivery of material by a DBE and final payment therefor to the DBE by the Contractor, but not later than thirty (30) calendar days after payment has been made by the Department to the Contractor for such work or material without regard to any retainage withheld by the Department, the Contractor shall submit a DBE Payment Report on Department form SBE 2115 to the Division's Chief Engineer. If full and final payment has not been made to the DBE, the Report shall indicate whether a disagreement as to the payment required exists between the Contractor and the DBE or if the Contractor believes that the work has not been satisfactorily completed. If the Contractor does not have the full amount of work indicated in the Utilization Plan performed by the DBE companies indicated in the Plan, the Department will deduct from contract payments to the Contractor the amount of the goal not achieved as liquidated and ascertained damages.

- D. The Department reserves the right to withhold payment to the Contractor to enforce the provisions of this Special Provision. Final payment shall not be made on the contract until such time as the Contractor submits sufficient documentation demonstrating achievement of the goal in accordance with this Special Provision or after liquidated damages have been determined and collected.

CREATE DBE forms for all Freight Railroad bid packages

If freight railroads elect to bid CREATE construction work they will be required to include the attached forms in their bid packages and the forms must be filled out by all bidding prime contractors and/or their associated DBE subcontractor(s). Some brief instructions are included below;

- 1) The form "CREATE Railroad Project DBE Utilization Plan" is to be filled out and executed by the all bidding prime contractors. The PS&E number is found on the plans, the project name is the Railroads name for the project, county is where the construction occurs, the total bid is the bidding primes total cost, the contract DBE% is the goal % required by the bid package and the contract DBE goal (\$) is the bidding prime contractors total cost times the contract goal %. Further, the bidding prime contractor will check which box applies to his or her bid (meet or exceed versus fail to meet) and document the actual DBE goal % that the bidding prime contractor's bid will produce.

- 2) If IDOT's Bureau of Railroads has established a DBE goal for this project greater than 0% then form "CREATE Railroad Project DBE Utilization Plan Back-Up Page" shall be filled out by all bidding prime contractors and attached to the page described in 1) above. This page shows the detail on all the DBE subcontractors used in the bidding prime contractor's bid. Use as many copies of this form as necessary to accommodate all DBE subcontractors.

- 3) The form "CREATE Railroad Project DBE Participation Form" will be filled out jointly by both the bidding prime contractor and each participating DBE subcontractor outlined in the form described in 2) above. It must include the agreed upon work detail and cost information and be executed by both the bidding prime contractor and the DBE subcontractor.

Please direct any questions concerning these forms to;

Mr. Samuel Tuck III

Illinois Department of Transportation

(312) 793- 3940

samuel.tuck@illinois.gov

CREATE Railroad Project DBE Utilization Plan

(1) Policy - It is public policy that disadvantaged businesses as defined in Federal Regulations 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal or State funds. Consequently the requirements of 49 CFR Part 23 apply to this contract.

(2) Obligation - The contractor agrees to ensure that disadvantaged businesses as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with Federal or State funds. The contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that said businesses have the maximum opportunity to compete for and perform under this contract. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.

(3) Project and Bid Identification - Complete the following information concerning the project and bid:

CREATE PS&E Number

Project Name

County

Total Bid

Contract DBE Goal (%)

Contract DBE Goal (\$)

(4) Assurance - I, acting in my capacity as an officer of the undersigned bidder (or bidders if a joint venture), hereby assure the Railroad that on this project my company will: (check one)

Meet or exceed contract award goals and will provide participation as follows:

Disadvantaged Business Participation percent

Attached are the signed statements required of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

Fail to meet contract award goals but will demonstrate that good faith efforts were made to meet the goals and that my company will provide participation as follows:

Disadvantaged Business Participation percent

The contract goals should be accordingly modified or waived. Attached is all information required in support of this request. Also attached are participation statements for firms that are participating to the extent of the above percentages.

Signature _____

Company _____

Name (print) _____

Title _____

Date _____

The Railroad is requesting disclosure of information that is necessary to accomplish the purpose as outlined under State and Federal law. Disclosure of this information is **REQUIRED**. Failure to provide any information will result in the contract not being awarded. Please include this completed form with your bid.

CREATE Railroad Project DBE Utilization Plan Back-Up Page

Project Element and Cost Summary - Complete the following information concerning proposed DBE use:

CREATE PS&E # Project Name

County

Prime Contractor Contract DBE Goal (\$)

DBE Sub-Contractor

Bid Item Number Sub amount (\$)

DBE Sub-Contractor

Bid Item Number Sub amount (\$)

DBE Sub-Contractor

Bid Item Number Sub amount (\$)

DBE Sub-Contractor

Bid Item Number Sub amount (\$)

Cost All DBE Subs (this page)

Total Cost All DBE Subs (All Pages)

Attachment 9

Workers' Compensation Insurance Requirements

WORKERS' COMPENSATION INSURANCE

Prior to the execution of his construction contract by the Illinois Department of Transportation, Bureau of Railroads, hereinafter referred to as "Bureau", the Contractor shall furnish to the Bureau certificates of insurance covering Workers' Compensation, or satisfactory evidence that this liability is otherwise taken care of in accordance with Section 4.(a) of the "Workers' Compensation Act of the State of Illinois" as amended.

Such insurance, or other means of protection as herein provided, shall be kept in force until all work to be performed under the terms of the contract has been completed and accepted in accordance with the specifications, and it is hereby understood and agreed that the maintenance of such insurance or other protection until acceptance of the work by the Bureau is a part of the contract. Failure to maintain such insurance, cancellation by the Industrial Commission of its approval of such other means of protection as might have been elected, or any other act which results in lack of protection under the said "Workers' Compensation Act" may be considered as a breach of the contract.

Attachment 10
Domestic Steel Requirement

SPECIAL PROVISION FOR DOMESTIC SOURCE FOR STEEL

Control of Materials: All steel products, as defined by the Illinois Steel Products Procurement Act, incorporated into this project shall be manufactured or produced in the United States and, in addition, shall be domestically fabricated. The Contractor shall obtain from the steel producer and/or fabricator, in addition to the mill analysis, a certification that all steel products meet these domestic source requirements.

Attachment 11

Retainage

CREATE Program Bid Package Language for Railroad Biddable PS&E's –

Retainage

If the contract designates that retainage will be withheld from the prime contractor, the Railroad shall make prompt and regular incremental acceptances of portions, as determined by the Railroad, of the biddable work and pay retainage to the prime contractor based on these acceptances. After receiving a retainage payment for work satisfactorily completed and accepted, the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors related to that item of work. The time period for payment shall be the same as described elsewhere in the contract.

If the contract does not designate that retainage will be withheld from the prime contractor, if the contract does not preclude the prime contractor from withholding retainage from subcontractors, and if the prime contractor keeps any retainage from subcontractors, then the prime contractor must make prompt and full payment, including any retainage, to the subcontractor within the same time period for any other payment, as described elsewhere in the contract, after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment may take place only for good cause and with the Railroad's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Federal regulation 49 CFR 26.29. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor.

Attachment 12

Debarment Form and Lobbying Certification

CREATE Form for All Freight Railroad Bid Packages

In response to Contract _____

STATEMENT OF NON-DEBARMENT

I, _____, representing _____
(Authorized Person) (Company)

Do hereby state that _____ is not debarred, suspended or
(Company)

otherwise prohibited from providing the services indicated by the Contract Documents by any Federal,

State or Local Agency.

COMPANY: _____

BY: _____
(Signature and Title)

ACKNOWLEDGED BY:

STATE OF: _____

COUNTY OF: _____

Before me, a Notary Public, personally appeared the above named, _____,
and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public

My Commission expires _____

County of Residence _____

CERTIFICATION REGARDING LOBBYING
CREATE Form for All Freight Railroad Bid Packages

This Certification is required to be completed and returned with the solicitation if the offer EXCEEDS \$100,000. Failure to return this Certification with the solicitation may result in a determination that the offer is non-responsive or unacceptable. The undersigned certifies, to the best of his or her knowledge or belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, relative to this Agreement and the extension, continuation, renewal, amendment, or modification of this Agreement, grant, loan or cooperative agreement related to this Agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in all subcontracts, loans, and cooperative agreements related to this Agreement, and that all sub-recipients shall certify and disclose accordingly.

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

Executed this _____ day of _____, 20_____

By _____
(Signature of authorized official)

Print/Type Name

Title of authorized official

Attachment 13

Buy America and Buy American Provisions

American Recovery and Reinvestment Act of 2009, Section 1605 – Buy American (100% Domestic Content of items below)	Federal Aviation Administration (FAA) 49 U.S.C. § 50101 – Buy American (see discretionary waiver when 60% Domestic Content of items below)	Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America; 23 C.F.R. § 635.410 (100% Domestic Content of items below)	Federal Railroad Administration (FRA) High Speed Rail Program 49 U.S.C. Chapters 244, 246; § 24405 – Buy America (100% Domestic Content of items below)	National Railroad Passenger Corporation (AMTRAK) 49 U.S.C. § 24305	Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661 (Buy America Requirements); (See 60% Domestic Content for buses and other Rolling Stock)
<p><u>Buy American</u></p> <p>The Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a <u>public building or public work</u> unless all of the <u>iron, steel, and manufactured goods</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The head of the Federal department or agency finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or</p> <p>(3) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.</p> <p><u>Other</u></p> <p><i>There are provisions in the Recovery Act for the Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, and Federal Highway Administration to apply their own grant requirements, including Buy America(n).</i></p> <p><u>All waivers have to be posted</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) apply.</p>	<p><u>Buy American</u></p> <p>The FAA will not obligate any funds authorized to be appropriated for any project unless <u>steel and manufactured products</u> used in such projects are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Administrator has delegated authority to grant waivers to this requirement to Director of Acquisition and Contracting; Regional Administrators; and Center Directors upon finding that compliance with the Act would:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;</p> <p>(3) When procuring a facility or equipment under the Airport and Airway Improvement Act of 1982:</p> <p>(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and</p> <p>(B) final assembly of the facility or equipment has occurred in the United States; or</p> <p>(4) Including domestic material will increase the cost of the overall project by more than 25 percent.</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Buy America</u></p> <p>The Secretary of Transportation shall not obligate any funds unless <u>steel, iron, and manufactured products</u> used in such project are produced in the United States.</p> <p>Applies to iron and steel products and their coatings that are to be permanently incorporated into the project. The FHWA, in its 1983 rulemaking, determined that Buy America did not apply to raw materials and waived its application to manufactured products, although in the statute, based on the public interest. Lack of adequate domestic supply resulted in a 1995 nationwide waiver for iron ore, pig iron, and reduced/processed/pelletized iron ore. In 1994, a nationwide waiver for specific ferryboat parts came into effect.</p> <p><u>Waivers</u></p> <p>The Secretary of Transportation may waive the requirement if the Secretary finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) Such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or</p> <p>(3) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent (this is a standing waiver codified in regulations when alternate bidding procedures are used).</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>All waivers have to be posted</u> in Federal Register. All proposed waivers are first posted on the FHWA's website for a 15-day comment period prior to publishing the final decision in the Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Buy America</u></p> <p>The Secretary of Transportation may obligate funds for a project only if the <u>steel, iron, and manufactured goods</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Secretary of Transportation may waive the requirement if the Secretary finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;</p> <p>(3) Rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or</p> <p>(4) Including domestic material will increase the cost of the overall project by more than 25 percent.</p> <p><u>Other</u></p> <p>The requirements only apply to projects for which the costs exceed \$100,000.</p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>All waivers have to be posted</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Domestic Buying Preferences</u></p> <p>Amtrak shall buy only:</p> <p>(A) unmanufactured articles, material, and supplies mined or produced in the United States; or</p> <p>(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.</p> <p><u>Waivers</u></p> <p>The Secretary may exempt Amtrak from this subsection if the Secretary decides that:</p> <p>(A) for particular articles, material, or supplies--</p> <p>(i) the requirements are inconsistent with the public interest;</p> <p>(ii) the cost of imposing those requirements is unreasonable; or</p> <p>(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or</p> <p>(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.</p> <p><u>Other</u></p> <p>The requirements apply only when the cost of those articles, material, or supplies bought is at least \$1 million.</p>	<p><u>Buy America</u></p> <p>No funds may be obligated by FTA for a grantee project unless all <u>iron, steel, and manufactured products</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Administrator may waive the general requirements if the Administrator finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;</p> <p>(3) The inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent.</p> <p><u>Rolling stock procurements</u></p> <p>(a) The Buy America provisions do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components produced in the United States is more than 60 percent of the cost of all components and final assembly takes place in the United States.</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>Post only "public interest" waivers</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>

BUY AMERICA CERTIFICATE

FHWA

FOR FUNDS OBLIGATED AFTER JANUARY 6, 1983
OTHER THAN ROLLING STOCK

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 and the regulations of 23 C.F.R. § 635.410

Date _____

Signature _____

Title _____

Company Name _____

OR

The Bidder certifies that it cannot comply with the requirements of Section 165a of the Surface Transportation Assistance Act of 1982, but may qualify for an exemption to the requirements pursuant to Section 165b of the Surface Transportation Act and regulations in 23 C.F.R. § 635.410

Date _____

Signature _____

Title _____

Company Name _____

IMPORTANT:

THIS CERTIFICATE MUST BE EXECUTED AND SUBMITTED WITH THE BID/PROPOSAL. AFTER THIS CERTIFICATE HAS BEEN EXECUTED, A BIDDER MAY NOT SEEK A WAIVER.

NOTE: The U.S./Canadian Free Trade Agreement does not supersede the Buy America Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

BUY AMERICA CERTIFICATE

FTA

FOR FUNDS OBLIGATED AFTER JANUARY 6, 1983
OTHER THAN ROLLING STOCK

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 and the regulations of 49 CFR 651.

Date _____

Signature _____

Title _____

Company Name _____

OR

The Bidder certifies that it cannot comply with the requirements of Section 165a of the Surface Transportation Assistance Act of 1982, but may qualify for an exemption to the requirements pursuant to Section 165b of the Surface Transportation Act and regulations in 49 CFR 661.7.

Date _____

Signature _____

Title _____

Company Name _____

IMPORTANT:

THIS CERTIFICATE MUST BE EXECUTED AND SUBMITTED WITH THE BID/PROPOSAL. AFTER THIS CERTIFICATE HAS BEEN EXECUTED, A BIDDER MAY NOT SEEK A WAIVER.

NOTE: The U.S./Canadian Free Trade Agreement does not supersede the Buy America Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

Attachment 14

Procedures for Land Acquisition – District 1

LAND ACQUISITION LOCAL AGENCY PROJECTS
FOR CREATE PROJECTS LEAD RAILROADS ACT AS LPA
SUMMARY OF ACQUISITION PROCEDURES

1. At the pre-land acquisition meeting, verify who the acquiring agency (LPA) is and that the right of way will be acquired in that agency's name (for non-State routes). Discuss State and Federal Land Acquisition Policies and Procedures.
2. The LPA shall provide a letter containing its choice for appraiser, review appraiser, and negotiator to the Bureau of Land Acquisition for approval. State-approved appraisers' and negotiators' names can be provided if requested.
3. If it is known that a property owner wishes to donate the necessary right of way, a donation letter must be obtained. A sample letter can be provided by the Bureau of Land Acquisition. An appraisal is not required for a donated parcel; however, all other conveyance and compliance documents are required.
4. Submit the plats, legal descriptions, and title commitments for the parcels to be acquired to the Bureau of Land Acquisition for review. These documents are required for fee simple, permanent easement, and temporary easement acquisitions.
5. When the plats and legal descriptions are reviewed and approved by IDOT, the acquiring agency will be notified to begin the appraisal process.
6. If Federal Funds are utilized for ROW, the ROW agreement must be approved prior to the commencement of appraisals and negotiations.
7. When the appraisal and appraisal review are completed and the LPA approves the compensation to be paid, an approved appraisal with review certification should be forwarded to both the fee negotiator and IDOT for an approval.
8. **The fee negotiator cannot begin acquisition until the project receives Design Approval.**
9. When negotiations are completed, all documents, a title approval (certification) letter, and both the parcel and project compliance checklists are to be submitted to this office before the right of way acquisition can be certified. Samples of required documents can be provided by the Bureau of Land Acquisition in District 1, if necessary.



Illinois Department of Transportation

Office of Highways Project Implementation / Region 1 / District 1
201 West Center Court / Schaumburg, Illinois 60196-1096

LAND ACQUISITION OVERVIEW BY LOCAL PUBLIC AGENCIES FOR CREATE PROJECTS LEAD RAILROAD ACTS AS LPA

Whenever a Local Public Agency (LPA) becomes responsible for acquiring right of way for a locally sponsored project involving Federal funds in any phase, or for certain State projects, the IDOT Division of Highways *Land Acquisition Policies and Procedures Manual* must be followed to ensure full compliance with Title II and Title III of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970". Land acquisition includes any and all temporary and permanent easements, as well as fee takes, required to construct the proposed improvement.

Title II of the Uniform Act establishes a uniform policy for the fair and equitable treatment of persons displaced as a result of federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Title III of the Act establishes policies in regard to expeditious acquisition by negotiation, independent appraisal of real property and written determination of just compensation in order to encourage the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners, and to promote public confidence in federal and state land acquisition practices.

General Information

1. The land acquisition process normally begins with the LPA representative or the engineering consultant contacting the District One, Bureau of Land Acquisition Local Agency Acquisition Coordinator to schedule the Project Pre-Acquisition Meeting. This meeting, which marks the beginning of required land acquisition coordination, should be set up **no later than** when the Project Development Report is in IDOT's Central Office (Springfield) awaiting final review and approval, or prior to the commencement of plat of highway and legal description preparation, whichever occurs first.
2. All land acquisition documentation forms, conveyance related documents and correspondence must include the Route Name, Bureau of Land Acquisition Job Number (R-9X-XXX-XX), the local Section Number and the Parcel Number.
3. All land acquisition submittals to the District One office (including plats and legal descriptions) should be directed to the LPA Coordinator.
4. If the LPA believes that a property owner may be willing to donate a needed parcel (take or easement), a Donation Letter (form letter available) should be sent as soon as the right of way requirements are known (preferably during Phase 1 engineering). The donation letter is a letter of intent and is not a form of conveyance.

5. The LPA should request approval of the appraiser, review appraiser and negotiator to be utilized on the project for approval by the District. Qualified consultants specializing in real estate appraisal and negotiation shall be engaged when the LPA in-house staff is not adequate in size or not qualified to perform such services. A complete list of IDOT approved Land Acquisition Fee Consultants can be found at <http://www.idot.illinois.gov/doing-business/procurements/land-acquisition-services/index>
6. It is recommended that fee appraisers and fee negotiators to be used be on IDOT's list of approved appraisers and negotiators and must demonstrate qualifications commensurate with individual project demands.

Plats and Legals

1. It is strongly recommended that phase 1 engineering contracts be set up or amended to allow work to be performed on the plat of highway and legal descriptions prior to commencement of the Phase 2 engineering. This can cut three or four months from the project schedule.
2. Two copies of the plat of highway, legal descriptions, and title commitments should be submitted for review and approval. The "Plat of Highways Checklist" is to be utilized for preparing such plats.
3. The plat of highway is an assembly drawing showing multi-parcel plat features of all right of way takings on a project. Surveyors should be familiar with Chapter One, "ROW Engineering" of the [Land Acquisition Policies and Procedures Manual](#).
4. Legal descriptions should be typed about four inches down from the top of page on a standard 8½" X 11" sheet of paper, NOT in all caps. The LPA's name, route name, job number, local section number, and parcel number should be typed in the upper right corner.
5. If federal funds will be utilized for land acquisition, the District must withhold approval to commence with appraisal and negotiation activities until federal authorization is obtained.
6. When pre-final plats and legals are substantially acceptable, approval to begin appraisal activity will be given by the District.

Appraisals

1. Appraisal activity must not begin prior to receiving approval of the plats and legals.
2. Appraisals must be on current standard IDOT Appraisal Forms. The original appraisal document for each parcel should be forwarded by the LPA (or appraiser) to the review appraiser for review and certification.
3. The *Appraisal Review Certification*, standard IDOT forms, must be utilized for the review appraisal. The review appraiser (or LPA representative) sends an appraisal and review appraisal certification for each parcel to the District for review *after certifications are signed by the appropriate representative*.
4. Minimum Payment Procedure (MPP) or waiver valuations are recommended when consideration to be paid for a parcel does not exceed \$10,000 and no condemnation

is anticipated. These cannot be prepared by a licensed appraisal per USPAP and FHWA, they can be prepared by a trained LPA official.

5. After review and approval by the District, the LPA will be notified to begin negotiation activities.
6. A copy of an appraisal for each parcel will be kept in the District's project file. For parcels being acquired in the name of the LPA, forms must be on LPA letterhead and signed by LPA. For parcels being acquired in the State's name, the appraisal must be signed by the District; an original of the appraisal will be kept in the Districts files.

Negotiation

1. Approval to begin negotiation cannot be given prior to the Design Approval date unless the District authorizes Advanced Acquisition in hardship or protective buying situations.
2. Negotiation must not commence prior to approval of the appraisals by the District One Bureau of Land Acquisition. For donated parcels, negotiation must not begin prior to approval of the plat of highways and legal descriptions.
3. Separate files must be kept for each parcel to be acquired. A copy of the files will be submitted to the District for its permanent records upon completion of acquisition.
4. The negotiator is responsible for presenting the offer to purchase (full appraisal amount), preparing the necessary conveyance related documents, obtaining owner's signatures, and clearing title exceptions (Schedule B).
5. The negotiator prepares the certification documentation, which includes Parcel and Project Compliance Checklists, Negotiator's Reports and other forms to ensure that the Bureau of Land Acquisition is able to certify the acquisition process.
6. At the time of presenting the offer to purchase, if the appraisal review is over six months old, an **updated review appraisal (or appraisal if over 1 year)** should be obtained.
7. Administrative settlements must be documented and approved on LPA letterhead indicating the basis of approval of the offer if it is different than the appraised value.
8. Title reports must be no more than 120 days old when the LPA attorney approves title or when documents are submitted to IDOT for approval (acquisitions in the name of the State) for parcels where consideration being paid does not exceed \$10,000. Where consideration being paid does exceed \$10,000, title reports must be no more than 90 days old when title is approved.
9. The negotiator should indicate how title has been cleared by hand writing actions taken in the margin of Schedule B of the title report. This goes to the LPA attorney and in IDOT's copy of the project file.
10. If title is being acquired in the name of the LPA, the LPA attorney must approve title for each parcel prior to the property owner being paid the agreed upon consideration.
11. If title is being acquired in the name of the LPA, parcel acquisitions must be certified (as to compliance with Title II and Title III of the Uniform Act) by the LPA attorney via

the LPA Attorney Certification Letter (a sample certification letter can be provided). A separate certification letter should be prepared for each parcel.

12. If title is being acquired in the name of the State of Illinois (on State routes only), written title approval must be obtained by the District Bureau of Land Acquisition for parcels where consideration to be paid does not exceed \$10,000. Title approval must be procured by the District office from the Attorney General's office for parcels where consideration to be paid exceeds \$10,000. Either title approval must occur before payment is made to the property owner by the LPA.
13. The negotiator is responsible for keeping records of all communications and work done to acquire each parcel of right of way (the Negotiator's Report). The negotiator must obtain the Local Agency Representative's signature on page 3 of the Project Compliance Checklist.
14. It is the responsibility of the LPA Representative - not the negotiator - to deliver the appropriate payment to the property owner and to file the proper property tax waiver documents.
15. IDOT's copy of the parcel files and Compliance Review Checklists must be submitted to the Bureau of Land Acquisition's LPA Coordinator prior to the date shown on the Local Roads Letting Schedule to obtain certification. If it is determined that the files are in order (including recorded conveyance documents); that the LPA attorney has certified each parcel acquisition; and that the property owners have been paid, the District will certify the project.
16. When all land acquisition activities are completed, the original parcel files should be turned over to the LPA for storage.
17. The negotiator's records may be subject to audit at some future date by a federal and/or state investigator to determine whether or not proper procedures were followed.
18. Copies of title insurance policies should be forwarded to the District prior to compliance certification.
- 19. *The Letting Schedule requires all certifications to occur approximately eight weeks prior to the project being let (no exceptions).***
- 20. If RELOCATION is required, additional steps and coordination will be incurred by the negotiator, the LPA and the Department which is beyond the scope of this summary.**

LPA Acquisition Schedule

Plats of Highway, legal descriptions & title reports Could be done during Phase 1 Engineering	3 Months
ROW Agreement	3-6 Months
Appraisal and Appraisal Review May be done during Phase 1 Engineering if no federal funds being used for acquisition	3 Months

Negotiations 3 to 6 Months
Cannot begin prior to Design Approval date.

Condemnation 12 to 18 Months
Varies by county. LPA's do not have quick take authority.

As a reminder, all local agency land acquisition submittals, inquiries and comments should be directed to IDOT's Bureau of Land Acquisition in District 1.

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