

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

1. General

- A. The location, scope of work, cost and working days are estimates. Emergency work is subject to highly changeable field conditions. Actual cost, schedule and type of work may vary.
- B. Contractor Requirements are incorporated by reference into the Agreement. In the event that there is a conflict or inconsistency between the Agreement terms and Contractor Requirements, the terms and conditions of this Agreement shall control.

2. Contract Provisions

- A. All work shall be done in accordance with the provisions of the 2018 Standard Specifications, and the amendments, and **[if plans are available to be furnished]** as shown on plans to be furnished by the Engineer. In the event of conflict between the 2018 Standard Specifications and the special provisions in this Agreement, the special provisions in this Agreement shall control.
- B. All references to Director in the 2018 Standard Specifications shall be construed to mean Department District Director.
- C. All references to Engineer or Resident Engineer shall be construed to mean Caltrans Contract Manager.

3. Start of Job Site Activities and Time

The first three (3) paragraphs of Section 8-1.04, "Start of Job Site Activities," of the 2018 Standard Specifications are amended to read: "Begin work as soon as possible when directed to do so by Caltrans Contract Manager and diligently prosecute the work to completion without causing delay. The estimated number of working days needed to complete the work indicated is an estimate and does not constitute an expressed or implied promise of the actual contract duration. If conditions at the site make it feasible to finish ahead of schedule, endeavor to do so."

4. Budget Contingency Clause

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to Caltrans by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if Congress or State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. Pursuant to Government Code Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally-mandated program or that is directly dependent upon the receipt of federal funds by a State agency.
- E. Caltrans has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

5. Cost Limitation

The total amount of this Agreement shall not exceed the original amount unless a Change Order is received and processed in accordance with Section 4-1.05, "Changes and Extra Work," of the 2018 Standard Specifications.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

6. Prompt Payment Clause

- A. Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927 and all agreements must comply with Public Contract Code Sections 10262 and 10262.5.
- B. Pursuant to Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by Caltrans.
- C. Failure of Contractor adhering to Public Contract Code Section 10262 may result in termination of this Agreement per Public Contract Code Section 10253 and disciplinary action by the Contractors State License Board may be implemented
- D. Pursuant to 49 Code of Federal Regulations, Part 26.29(b), Caltrans will not withhold payment from Contractor, and Contractor, and any of its subcontractors, shall not withhold payment from any subcontractor when the Agreement is Federally funded.
- E. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

7. Payment

- A. Work performed under this contract will be paid for on a force account basis in accordance with the provisions of Section 9-1.04, "Force Account", of the 2018 Standard Specifications and terms of this Agreement.
- B. The markup rates in Section 9-1.04, "Force Account", of the 2018 Standard Specifications that are added to the direct costs of labor, materials, and equipment rental are amended to 21 percent (21%).
- C. Paragraph 2 of Section 9-1.04A, "Force Account—General" of the 2018 Standard Specifications is amended to read: "If a Subcontractor performs work at force account, accept an additional 10 percent (10%) markup to the total cost of that work paid at force account, including the markup specified in **paragraph 7B** of this section, as reimbursement for additional administrative costs."
- D. The following is added to Section 9-1.04D(1), "(Equipment Rental) General" of the 2018 Standard Specifications as the fourth (4th) paragraph, "Overtime and Multiple shift differentials shown in the publication, 'Labor Surcharge And Equipment Rental Rates,' shall not apply. All equipment will be paid at the straight time rate in the publication, 'Labor Surcharge And Equipment Rental Rates, for all hours worked. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged by the rental agency will be paid to the Contractor."
- E. All equipment operated for this Agreement and compensated by force account, except equipment covered by **paragraphs 7F and 7G** of this Agreement, is considered equipment not on the job site and required for original-contract work. The following is added to Section 9-1.04D(4), "Equipment Not on the Job Site and Required for Original-Contract Work" of the 2018 Standard Specifications as the 2nd paragraph, "Overtime and Multiple shift differentials shown in the publication, 'Labor Surcharge and Equipment Rental Rates,' shall not apply. All equipment will be paid for at the straight time rate for all hours worked. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged by the rental agency will be paid to Contractor."
- F. The fifth (5th) paragraph of Section 9-1.04A, "General", of the 2018 Standard Specifications is amended to read: "Payment for owner-operated labor and equipment is made at the current market-priced invoice submitted."
- G. Section 9-1.05, "Extra Work Performed by Specialists", of the 2018 Standard Specifications is amended to read: "The Contractor, and all Subcontractors obtained before or after contract

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

execution, must itemize all labor, material, and equipment rental costs, and shall not be deemed Specialists unless the selected Contractor or available Subcontractors on site are not capable of performing the specialty work and it is not the special service industry's established practice to provide cost itemization. In addition, Engineer may approve for non-itemized Specialist billing work required to be performed at an off-site manufacturing plant or machine shop. To obtain approval as a Specialist, Contractor shall submit on behalf of the Subcontractor a request to Engineer prior to the start of the proposed Specialist work. If approval is granted, Engineer will accept the non-itemized invoices for Specialist work performed, provided the invoices are at current market rates. If approval is not granted prior to the start of the proposed Specialist work, Contractor or Subcontractor shall itemize labor, material, and equipment rental costs as required by the 2018 Standard Specifications." Engineer determines the cost based on the Specialist invoice price minus any available or offered discounts plus a 10 percent (10%) additional administrative cost markup.

- H. Upon completion of all the work and acceptance of the Agreement, Contractor will be paid only fees directly charged by surety for the bond premium. No other fees or costs will be reimbursed.
- I. Section 12-1.04, "Payment," of the 2018 Standard Specifications does not apply. Payment for flagging will be made under Section 9-1.04, "Force Account," of the 2018 Standard Specifications.

8. State General Prevailing Wage Rates

- A. Both Federal and State prevailing wage requirements apply to this contract. The Contractor shall ascertain which prevailing wage determination applies for each type of work performed. Where there is a conflict in State and Federal prevailing wage rates for the same work, pay the higher of the two rates.
- B. Contractor shall comply with the applicable provisions of the Labor Code, including those provisions requiring the payment of not less than the general prevailing wage rates. Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.
- C. Pursuant to Labor Code Section 1771.5, not less than the general prevailing wage rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work for work of a similar character in the county in which the work is to be performed shall be paid to all workers employed on this Agreement, if this Agreement is for:
 - 1) More than \$25,000 for public works construction, or
 - 2) More than \$15,000 for the alteration, demolition, installation, repair, or maintenance of public works.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 8**.

9. State Prevailing Wage Rate Determinations

- A. The General Prevailing Wage Rate Determinations applicable to the project are available and on file with the Caltrans Regional/District Labor Compliance Office. These wage rate determinations are made a specific part of this contract by reference pursuant to Labor Code Section 1773.2. Any special wage rate determinations applicable to this project are attached.
- B. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at: <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Federal prevailing wage requirements and wage determinations will be attached to this Agreement at time of execution.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations are to be obtained by Contractor from Caltrans' District/Regional Labor Compliance Officer. These wage rate determinations are to be posted by Contractor at the job site in accordance with Labor Code Section 1773.2.
- D. After the award, questions pertaining to predetermined wage rates should be directed to Caltrans Labor Compliance Office:

Caltrans Headquarters Labor Compliance Office
1120 N Street, MS-44
Sacramento, CA 95814
Email: labor.compliance@dot.ca.gov

10. Hours of Labor

- A. Eight (8) hours labor constitutes a legal day's work. Contractor shall forfeit, as a penalty to the State of California, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by Contractor or any Subcontractor under Contractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and 40 hours in any week, at not less than one and one-half times the basic rate of pay, as provided in Section 1815.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

11. Contractor Registration Program

No Contractor or Subcontractor may be awarded a public works contract or engage in the performance of any contract for public works, unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

12. Prohibition of Delinquent Taxpayers

Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the California Department of Tax and Fee Administration or the Franchise Tax Board pursuant to Revenue and Taxation Code Sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

13. Employment of Apprentices

- A. Where either this Agreement or a subcontract exceeds \$30,000, the Contractor and any Subcontractors of any tier shall comply with all applicable requirements of Labor Code Sections 1777.5, 1777.6, and 1777.7 in the employment of apprentices.
- B. Contractor and its Subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and Subcontractors are advised to contact the State Division of Apprenticeship Standards, PO Box 420603, San Francisco, California 94142-0603, or one of its branch offices, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The Contractor is responsible for all Subcontractors' compliance with these requirements. Penalties for failure to comply with apprenticeship requirements are specified in Labor Code Section 1777.7.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 13**.

14. Payroll Records

- A. Contractor and its Subcontractors shall comply with the following provisions. Contractor shall be responsible for compliance by its Subcontractors.
- 1) Each Contractor and its Subcontractors shall keep accurate payroll records and supporting documents as mandated by California Labor Code Section 1776 and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a) The information contained in the payroll record is true and correct.
 - b) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by all employees on the public works project.
 - 2) The payroll records described in **paragraph 1, above**, shall be certified. The certified payrolls and records related to employee wages, fringe benefits, payroll tax and deductions shall be made available for inspection and copying by Caltrans' representatives at all reasonable hours at the principal office of Contractor. Contractor shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to employee or employee's authorized representative upon request.
 - b) A certified copy of all payroll records described in **paragraph (1) above**, shall be made available for inspection or furnished upon request to a representative of Caltrans, the Department of Industrial Relations Division of Labor Standards Enforcement and the Division of Apprenticeship Standards. Certified payrolls submitted to Caltrans and, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Contractor.
 - c) The public shall not be given access to certified payroll records by Contractor. Contractor is required to forward any requests for certified payrolls to Caltrans Contract Manager by both email and a hard copy sent by regular mail on the business day following receipt of the request.
 - 3) Each Contractor shall submit a certified copy of the records described in **paragraph 1, above**, to the entity that requested the records within 10 days after receipt of a written request.
 - 4) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Caltrans shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Contractor awarded the Agreement or performing the Agreement shall not be marked or obliterated.
 - 5) Contractor shall inform Caltrans of the location of the records described in **paragraph 1, above**, including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - 6) Contractor and any Subcontractor shall have 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in **paragraph 1, above**. In the

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

event Contractor or a Subcontractor fails to comply within the 10-day period, they shall, as a penalty to Caltrans forfeit one hundred dollars (\$100) for each calendar day, or for any portion of a calendar day, for each worker, until strict compliance is achieved. Such penalties shall be withheld by Caltrans from payments when due. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

- B. The penalties specified in **paragraph 6**, above, for noncompliance with the provisions of said Section 1776 will be deducted from any monies due or which may become due to Contractor. Penalties assessed for failure to submit certified payrolls are forfeitures and not withholdings that will be returned to Contractor.
- C. Payrolls shall contain the full name, address, and social security number of each employee, the correct work classification (including apprentices, if applicable), rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Agreement. The "Statement of Compliance" shall be on forms furnished by Caltrans or on any form with identical wording. Any payroll that does not include the required "Statement of Compliance" will be deemed inadequate and unacceptable. Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors.
- D. Contractor and each Subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.
- E. Contractor shall submit a certified copy of all payroll records for verification by Caltrans Contract Manager and/or designee with each invoice. When progress payments are called for, Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by Contractor.
- F. Contractor shall pay any employee actually engaged in the moving and handling of goods being relocated under this Agreement no less than the prevailing wage rate.
- G. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this **Section 14**.

15. Penalty

- A. Contractor and any Subcontractor shall comply with Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit, as a penalty to Caltrans, not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any public work done under the contract by them, or by any Subcontractor under them, in violation of the provisions of the Labor Code and, in particular, Labor Code Sections 1775 to 1780, inclusively.
- B. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of Contractor or any Subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of Contractor or Subcontractor in meeting their prevailing wage obligations, or Contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or Subcontractor had knowledge of the obligations under the Labor Code. Contractor by executing and receiving a copy of this

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

Agreement is deemed to have knowledge of their obligations regarding the Labor Code's prevailing wage requirements. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or any Subcontractor.

- C. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by Subcontractor, Prime Contractor of the project is not liable for any penalties described above unless Prime Contractor had knowledge of that failure of Subcontractor to pay the specified prevailing rate of wages to those workers or unless Prime Contractor fails to comply with all the following requirements:
 - 1) The Agreement executed between Contractor and Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - 2) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by a Subcontractor to employees by periodic review of the certified payroll records of a Subcontractor.
 - 3) Upon becoming aware of the failure of a Subcontractor to pay their workers the specific prevailing rate of wage, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, withholding sufficient funds due Subcontractor for work performed on the public works project.
 - 4) Prior to making final payment to a Subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury for Subcontractor that Subcontractor has paid the specified general prevailing rate of per diem wages to their employees on the public works project and any amounts due pursuant to Section 1813.
- D. Pursuant to Labor Code Section 1775, Caltrans shall notify Contractor on a public works project within 15 days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.
- E. If Caltrans determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if Caltrans did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of moneys due Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by Caltrans.
- F. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this **Section 15**.

16. Subcontracting

- A. The second (2nd) and fifth (5th) paragraphs of Section 5-1.13, "Subcontracting," of the 2018 Standard Specifications shall not be applicable to this project.
- B. Contractor shall perform not less than 50 percent (50%) of the total cost of all work performed under this Agreement with its own organization.

17. Bonds

Section 3-1.05, "Contract Bonds", of the 2018 Standard Specifications is amended to read

"Furnish a payment bond which shall secure the payment of the claims of laborers, mechanics or materialmen employed on the work. The payment bond shall be in a sum equal to this Agreement." No performance bond is required.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

“All alterations, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds.”

18. Reporting Disabled Veteran Business Enterprise (DVBE) Utilization

If this Agreement requires DVBE participation, it is the responsibility of Contractor to track DVBE goal progress and Contractor must report the actual amount paid to certified Subcontractors. Contractors must comply with Government Code Section 14841 and Military and Veterans Code Sections 999.5(d) and 999.7 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059) (<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM3059>) to Caltrans Contract Manager with each invoice.

If Contractor fails to submit the ADM-3059 with the final invoice, Caltrans Contract Manager shall withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on the Agreement until Caltrans Contract Manager receives a complete and satisfactory ADM-3059. Caltrans Contract Manager shall notify Contractor by email that Contractor must submit a complete and satisfactory ADM-3059 within 30 days from the date of the notice. If Contractor fails to fully complete and submit the ADM-3059 within this 30-day period, Caltrans shall permanently withhold payment of the final invoice.

Upon Caltrans Contract Manager’s request, Contractor shall provide proof of payment for the work performed by the DVBE subcontractor(s).

19. Reporting Small Business/Micro Business (SB/MB) Utilization

If SB/MB Subcontractor participation is a requirement of this Agreement, Contractor must report the actual amount paid to certified Subcontractors. Contractor must comply with Government Code Section 14841 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059) (<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM3059>) to Caltrans Contract Manager with each invoice.

20. DVBE Goals (For State-Funded Contracts)

Contractor has the responsibility to attempt to attain the five percent (5%) DVBE utilization participation rate. Caltrans recognizes that during emergency situations, the work and timeframes may not lend themselves to always meeting this goal. Any utilization rate up to five percent (5%) will be accepted.

21. Disadvantaged Business Enterprise (DBE) Program Participation Without Goals (For Federal-Funded Contracts)

- A. This Agreement is subject to Title 49, Code of Federal Regulations (CFR), Part 26 (49 CFR) 26), entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by this reference and made part of this Agreement as if attached hereto.
- B. There is no specific contract goal for DBE participation in this Agreement.
- C. It is the policy of Caltrans that DBEs, as defined in 49 CFR 26, shall be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds to assist the State in meeting its federally mandated overall annual DBE goal. Contractor shall ensure that DBEs have an opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth 49 CFR 26, for this assurance.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of Agreement and may result in termination of this Agreement or other remedies Caltrans may deem appropriate.

- D. In order to ascertain whether or not the overall annual DBE goal is achieved, Caltrans tracks DBE participation on all Federal-aid contracts. The Disadvantaged Business Enterprise (DBE) Information (ADM-0227F) is incorporated as part of this Agreement.
- E. Contractor shall notify Caltrans Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.
- F. If subcontracting is allowed in this solicitation, any subcontract entered into between Contractor and Subcontractor(s) as a result of this Agreement shall contain all of the provisions of this **Section 20**.

22. Subcontractors

- A. Perform the work contemplated with resources available within your own organization and no portion of the work shall be subcontracted without written authorization by Caltrans Contract Manager.
- B. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to Subcontractors.
- C. Any substitution of Subcontractor(s) must be approved in writing by Caltrans Contract Manager in advance of assigning work to a substitute Subcontractor(s).
- D. A substitute DBE must possess the work category code(s) applicable to the type of work performed.
- E. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any Subcontractor(s), and no subcontract shall relieve you of your responsibilities and obligations. Be fully responsible to the State for the acts and omissions of its Subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its Subcontractor(s) is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any Subcontractor.

23. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

- A. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
- B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a CUF.

- D. DBE Subcontractors shall perform the work and supply the materials which they have listed in their response to the Agreement award requirements specified in the ADM-0227F, unless Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in **Section 26, DBE Substitutions**.
- E. You are not entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Contractor) pursuant to prior written authorization of Caltrans Contract Manager.

24. Exclusion of Retention

- A. In conformance with 49 CFR 26.29(b)(1), the retention of proceeds required by Public Contract Code Section 10261 shall not apply.
- B. In conformance with Public Contract Code Section 7200(b), in subcontracts between Contractor and a Subcontractor and in subcontracts between a Subcontractor and any Subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in Public Contract Code Section 7200(c), shall not apply. At the option of Contractor, Subcontractor(s) may be required to furnish payment and performance bonds issued by an admitted surety insurer.
- C. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

25. Payment to Subcontractor(s)

- A. Pay your DBE Subcontractor(s) and non-DBE Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by the State.
- B. Prior to the 15th of each month, submit documentation to Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in Contractor's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies, which is claimed toward DBE participation. Contractor shall also obtain and submit documentation to the Caltrans Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a non-DBE truck leasing company must use its own employees as drivers in order to be eligible to receive credit for the total value of the hauling services. The records must confirm that amount of credit claimed toward DBE participation conforms to the requirements of **Section 26 below** entitled, "DBE Substitutions."
- C. Submit to Caltrans Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and, if applicable, the DBE certification number of the truck owner for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on the Monthly DBE Trucking Verification form provided to Contractor by Caltrans Contract Manager.
- D. Return all moneys withheld from a Subcontractor within 30 days after receiving payment for work satisfactorily completed, even if other Agreement work is not completed and has not been accepted in conformance with the terms of the Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or a Subcontractor in the event of a dispute involving late payment or non-payment to Contractor or deficient performance or noncompliance by a Subcontractor.

26. DBE Records

- A. Maintain records of all subcontracts entered into with certified DBE Subcontractor(s) and records of materials purchased from certified DBE supplier(s). The records shall show the name and

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

business address of each DBE Subcontractor or vendor and the total dollar amount actually paid each DBE Subcontractor or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- B. Prime Contractor is required to submit a Monthly Disadvantaged Business Enterprises (DBE) Payment (CEM-2406) on the 15th of the following month for ongoing projects beginning October 1, 2014. Failure to submit the form will result in withholds.
- C. Upon completion of work in this Agreement, a summary of these records shall be prepared and submitted on the form entitled, Final Report—Utilization of Disadvantaged Business Enterprises First-Tier Subcontractors (CEM-2402F), and certified correct by Contractor or Contractor's authorized representative and shall be furnished to the Caltrans Contractor Manager. The form shall be furnished to Caltrans Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25 percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Contractor when a satisfactory CEM-2402F, is submitted to the Caltrans Contract Manager.

27. DBE Substitutions

- A. Do not substitute a listed DBE Subcontractor, supplier or, if applicable, a trucking company, without the prior written approval of Caltrans Contract Manager. Failure to obtain approval of substitute Subcontractors before work is performed, supplies are delivered, or services are rendered may result in payment being denied by Caltrans.
- B. Submit requests for substitution to Caltrans Contract Manager. Authorization to use other Subcontractors or suppliers may be requested for the following reasons:
 - 1) Listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written Agreement, when such written Agreement, based upon the terms and conditions for this Agreement or on the terms of such Subcontractor's or supplier's written bid, is presented by Contractor.
 - 2) Listed DBE becomes bankrupt or insolvent.
 - 3) Listed DBE fails or refuses to perform subcontract or furnish listed materials.
 - 4) Contractor stipulated that a bond was a condition of executing subcontract and listed DBE Subcontractor failed or refuses to meet the bond requirements of Contractor.
 - 5) Work performed by listed Subcontractor is substantially unsatisfactory and is not in substantial conformance with scope of work to be performed, or Subcontractor is substantially delaying or disrupting the progress of work.
 - 6) When it would be in the best interest of the State.
- C. At a minimum, Contractor's substitution request to Caltrans Contract Manager must include a:
 - 1) Written explanation of the substitution reason; and if applicable, include the reason a non-DBE Subcontractor is proposed for use.
 - 2) Written description of the substitute business enterprise, include its business status, DBE certification number, and status as a sole proprietorship, partnership, corporation, or other entity.
 - 3) Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

D. Prior to the approval of Contractor's substitution request, Caltrans Contract Manager must give written notice to the Subcontractor being substituted by Contractor. A copy of the notice sent by the Caltrans Contract Manager must be sent to the Division of Procurement and Contracts (DPAC). The notice must do all of the following:

- 1) Give the reason Contractor is requesting substitution of the listed Subcontractor;
- 2) Give the listed Subcontractor five (5) working days to submit written objections to DPAC and copies to Caltrans Contract Manager;
- 3) Notify Subcontractor that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution; and
- 4) Be served by certified or registered mail to the last known address of the listed Subcontractor.

The listed Subcontractor, who has been so notified, shall have five (5) working days within which to submit written objections to the substitution to Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subcontractor's consent to the substitution.

E. If written objections are filed by the listed Subcontractor, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed Subcontractor of a hearing by Caltrans on Contractor's request for substitution.

28. DBE Certification and De-certification Status

- A. If a DBE Subcontractor is decertified during the life of the Agreement, the decertified Subcontractor shall notify Contractor in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the Agreement, the Subcontractor shall notify Contractor in writing with the date of certification.
- B. Report any changes to Caltrans Contract Manager within 30 days.

29. Termination of DBE

- A. In conformance with 49 CFR 26.53 (f) (1) and 26.53 (f) (2), do not:
 - 1) Terminate for convenience the subcontract of a listed DBE Subcontractor and then perform that work with its own forces (personnel), or those of an affiliate, unless Contractor has received prior written authorization from the Caltrans Contract Manager to perform the work with other forces (other than Contractor's own personnel) or to obtain materials from other sources;
 - 2) If a DBE Subcontractor is terminated or fails to complete its work for any reason, Contractor will be required to replace that original DBE Subcontractor with another DBE Subcontractor; and
 - 3) If a DBE Subcontractor is terminated or fails to complete its work for any reason, Contractor will be required to make Good Faith Effort to replace the original DBE Subcontractor with another DBE Subcontractor to the extent needed to meet the Agreement goal.
- B. Noncompliance with the requirements of this section is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as Caltrans deems appropriate.

30. Surface Mining and Reclamation Act (SMARA)

All imported mineral aggregate materials from surface mines or commercial sources shall be from material sites listed as SMARA-approved by the California Department of Conservation. The Engineer may accept non-SMARA mineral aggregate material if the Governor suspends SMARA in

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

either a disaster proclamation or Executive Order and the mineral aggregate material is used for the sole purpose of reconstructing roadways damaged by the disaster.

31. Public Safety

A. The first sentence of the eighth paragraph of Section 7-1.04, "Public Safety", of the 2018 Standard Specifications is amended to read:

“Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the California Manual of Uniform Traffic Control Devices (MUTCD).”

B. Any work performed on or near a roadway must be in accordance with safety standards set forth in Sections 7-1.03, "Public Convenience," and 7-1.04, "Public Safety," of the 2018 Standard Specifications.

32. Removal of Asbestos and Hazardous Substances

A. When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and Contractor encounters materials which Contractor reasonably believes to be asbestos or a hazardous substance as defined in Health and Safety Code Section 25914.1, and the asbestos or hazardous substance has not been rendered harmless, Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.

B. In accordance with Health and Safety Code Section 25914.1, all such removal of asbestos or hazardous substances including any exploratory work to identify and determine the extent of such asbestos or hazardous substance will be performed by separate contract.

C. If an excusable delay of work in the area delays the current controlling activity, Contractor will be compensated for such delay as provided in Section 8-1.07, "Delays", of the 2018 Standard Specifications.

33. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

34. Nondiscrimination Clause (2 CCR 11105 Clause b)

A. During the performance of this Agreement, Contractor, and its Subcontractors, shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information,

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- B. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.
- C. Contractor shall permit access by representatives of Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.
- D. Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

35. Insurance—General Provisions

- A. Nothing in this Agreement is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.
- B. Contractor shall procure and maintain casualty insurance on all of its operations with companies acceptable to the State as follows:
 - 1) Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
 - 2) All insurance shall be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
 - 3) Contractor shall maintain completed operations coverage with a carrier acceptable to State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

36. Insurance—Workers' Compensation

- A. In accordance with Labor Code Section 1860, Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
- B. In accordance with Labor Code Section 1861, Contractor shall submit to Caltrans the following certification as soon as possible after contract award:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

- C. Contractor shall provide Employer’s Liability Insurance in amounts not less than the amounts set forth below:
 - 1) \$1,000,000 for each accident for bodily injury by accident
 - 2) \$1,000,000 policy limit for bodily injury by disease
 - 3) \$1,000,000 for each employee for bodily injury by disease
- D. If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen’s and Harbor Workers’ Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

37. Insurance–General Liability

- A. Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:
 - 1) Premises, operations, and mobile equipment
 - 2) Products and completed operations
 - 3) Broad form property damage (including completed operations)
 - 4) Explosion, collapse, and underground hazards
 - 5) Personal injury
 - 6) Contractual liability

B. The limits of liability shall be at least the amounts shown in the following table:

| Total Contract Amount | For Each Occurrence | Aggregate for Products/Completed Operation | General Aggregate | Umbrella or Excess Liability |
|---|---------------------|--|-------------------|------------------------------|
| ≤\$1,000,000 | \$1,000,000 | \$2,000,000 | \$2,000,000 | \$5,000,000 |
| >\$1,000,000 ≤\$10,000,000 | \$1,000,000 | \$2,000,000 | \$2,000,000 | \$10,000,000 |
| >\$10,000,000 ≤\$25,000,000 | \$2,000,000 | \$2,000,000 | \$4,000,000 | \$15,000,000 |
| >\$25,000,000 | \$2,000,000 | \$2,000,000 | \$4,000,000 | \$25,000,000 |
| 1. Combined single limit for bodily injury and property damage. 2. This limit shall apply separately to Contractor's work under this contract. 3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted. | | | | |

C. Contractor shall not require certified Small Business Subcontractors to carry Liability Insurance that exceeds the limits in the table above. Notwithstanding the limits specified herein, at the option of Contractor, the liability insurance limits for certified Small Business Subcontractors of any tier may be less than those limits specified in the table. For Small Business subcontracts, "Total Contract Amount" shall be interpreted as the amount of subcontracted work to a certified Small Business.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- D. The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of Contractor under this contract. Coverage for such additional insureds does not extend to liability:
- 1) Arising from any defective or substandard condition of the roadway which existed at or before the time Contractor started work, unless such condition has been changed by the work or the scope of the work requires Contractor to maintain existing roadway facilities and the claim arises from Contractor's failure to maintain;
 - 2) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor that occurred during the course of the work; or
 - 3) To the extent prohibited by Insurance Code Section 11580.04.
- E. Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by Insurance Services Office, Inc. of New Jersey, <https://www.verisk.com/insurance/brands/iso/>, or other form designated by Caltrans.
- F. The policy shall stipulate that the insurance afforded the additional insured applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and shall not be called upon to contribute with this insurance.

38. Insurance—Automobile

Contractor shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required in Section 34 under Paragraph B also applies to automobile liability insurance.

39. Insurance—Forms and Enforcement

- A. Contractor shall provide its General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.
- B. The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, Contractor is responsible for any deductible amount and shall warrant that the coverage provided to the State is in accordance with **Sections 34-36**, "Insurance", of this Agreement.
- C. Caltrans may verify Contractor's compliance with its insurance obligations. Ten (10) days before an insurance policy lapses or is canceled during the contract period, the Contractor shall submit to Caltrans evidence of renewal or replacement of the policy.
- D. If Contractor fails to maintain any required insurance coverage, Caltrans may maintain this coverage and withhold or charge the expense to Contractor or terminate Contractor's control of the work in accordance with Section 8-1.13, "Contractor's Control Termination," of the 2018 Standard Specifications.
- E. Contractor is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, directors and employees by Caltrans' acceptance of insurance policies and certificates.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- F. Minimum insurance coverage amounts do not relieve Contractor for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this contract.

40. Self-Insurance

- A. Self-insurance programs and self-insured withholding in insurance policies are subject to separate annual review and approval by the State.
- B. If Contractor uses a self-insurance program or self-insured withholding, Contractor shall provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is Contractor's acknowledgement that Contractor will be bound by all laws as if the Contractor were an insurer as defined under the California Insurance Code and that the self-insurance program or self-insured retention shall operate as insurance as defined under the California Insurance Code.

41. Satisfying a Self-Insured Retention (SIR)

All insurance required by this Agreement must allow, but not require, the State to pay any SIR and/or act as Contractor's agent in satisfying any SIR. The choice to pay any SIR and/or act as Contractor's agent in satisfying any SIR is at the State's discretion. If the State chooses to pay any SIR and/or act as Contractor's agent in satisfying any SIR, Contractor shall reimburse the State for the same.

42. Available Coverages/Limits

In the event the insurance coverages obtained by Contractor is broader in scope than, and/or the limits are higher than, those required under the contract, all such broader coverage and/or higher limits available to Contractor shall also be available and applicable to the State.

43. Indemnification

- A. Contractor agrees to defend, indemnify, and save harmless the State, including its officers, directors, employees, and agents (excluding agents who are design professionals) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity (Section 7-1.05 Claims) arising out of or in connection with Contractor's performance of this contract for:
 - 1) Bodily injury, including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of Contractor, the State, or any other contractor; and
 - 2) Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.
- B. Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. Contractor is not obligated to indemnify the State for claims arising from conduct delineated in Civil Code Section 2782 and to claims arising from any defective or substandard condition of the highway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires Contractor to maintain existing highway facilities and the claim arises from Contractor's failure to maintain. Contractor's defense and indemnity obligation shall extend to claims arising after the work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during the course of the work. State inspection is not a waiver of full compliance with these requirements.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- C. Contractor's obligation to defend and indemnify shall not be excused because of Contractor's inability to evaluate liability or because Contractor evaluates liability and determine that Contractor is not liable. Contractor shall respond within 30 days to the tender of any claim for defense and indemnity by the State, unless this time has been extended by the State. If Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, Caltrans may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the claim or until Contractor accepts or rejects the tender of defense, whichever occurs first.
- D. With respect to third party claims against Contractor, Contractor waives all rights of any type to express or implied indemnity against the State, its officers, directors, employees, or agents (excluding agents who are design professionals).
- E. Nothing in the Agreement is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.
- F. Contractor is responsible for any liability imposed by law and for injuries to or death of any person, including workers and the public, or damage to property. Indemnify and save harmless any county, city, or district and its officers and employees connected with the work, within the limits of which county, city, or district the work is being performed, all in the same manner and to the same extent specified for the protection of the State.

44. Disadvantaged Business Enterprise (DBE) Assurances

- A. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT) assisted contract or in the administration of its DBE Program or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement.

Upon notification by the applicable USDOT agency to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR, Part 26. They may also, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

- B. Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR, Part 26, in the award and administration of USDOT Federally-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments
- 2) Assessing sanctions
- 3) Liquidated damages
- 4) Disqualifying Contractor from future bidding as non-responsible

Each subcontract signed by the bidder must include this assurance.

- C. Contractor must make available to Caltrans Contract Manager a copy of all DBE subcontracts upon request.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- D. Contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Contractor obtains authorization from Caltrans. Unless Caltrans provides prior authorization approving a request for termination or substitution of a listed DBE, Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.

45. Title VI Assurances

A. Appendix A

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

- 1. Compliance with Regulations:** Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the US Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- 2. Nondiscrimination:** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, age, sex, or disability in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier will be notified by Contractor of Contractor’s obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, age, sex, or disability.
- 4. Information and Reports:** Contractor will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Caltrans or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to Caltrans or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of Contractor’s noncompliance with the non-discrimination provisions of this Agreement, Caltrans will impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to Contractor under the Agreement until Contractor complies, and/or
 - b) Cancelling, terminating, or suspending an Agreement, in whole or in part.
- 6. Incorporation of Provisions:** Contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as Caltrans or the FHWA may direct as a means of enforcing such provisions including

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

sanctions for noncompliance. Provided, that if Contractor becomes involved in, or threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request Caltrans to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Appendix E (Pertinent Non-Discrimination Authorities)

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC Sections 2000d et seq., 78 Stat. 252) prohibits discrimination on the basis of race, color, national origin) and 49 CFR Part 21
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC Section 4601) prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects;
3. Federal-Aid Highway Act of 1973 (23 USC Section 324 et seq.) prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973 (29 USC Section 794 et seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27;
5. The Age Discrimination Act of 1975 (42 USC Section 6101 et seq.), as amended, prohibits discrimination on the basis of age;
6. Airport and Airway Improvement Act of 1982 (49 USC Sections 471 and 47123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex;
7. The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage, and applicability of Title VI of the Civil Right Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients, and Contractors, whether such programs or activities are Federally funded or not;
8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC Section 12131-12189) as implemented by Department of Transportation regulations 49 CFR Parts 37 and 38;
9. The Federal Aviation Administration's Non-discrimination statute (49 USC Section 47123) prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, which requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin, and requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations;

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits you from discriminating because of sex in education programs or activities.

45. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week the contractor shall arrange for organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling. Contractor shall provide proof of compliance, i.e. organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from the Caltrans Contract Manager.

46. Solid Waste Disposal and Recycling Report

Submit a final Solid Waste Disposal and Recycling Report within five (5) business days after Contract acceptance. Show the types and amounts of project-generated solid waste taken to or diverted from landfills or reused on the project from start of work to Contract acceptance. This form is available for download from the internet at

<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?rmid=CEM4401>.

47. Recycled Materials: Certification Requirement

- A. Pursuant to State law (Pub. Cont. Code Section 12205), certify the percentage of postconsumer recycled materials contained in certain materials Contractor incorporates into the work under this contract. Contractor shall submit the report, "Postconsumer Recycled Materials Content Certification," to the Engineer upon contract completion.
- B. For the purposes of the report, postconsumer recycled materials consist of finished materials which would normally be disposed of as solid waste.

(See **Attachment 1, Interim Form CEM-4402, Postconsumer Recycled Materials Content Certification.**)

48. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by Caltrans must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

49. Electronic Signatures

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for this Agreement. Documents that are referenced by this Agreement may still require manual signatures.

50. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions"

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law unless the contract has been Federalized (i.e. there is federal participation in any phase). The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

STATE OF CALIFORNIA—DEPARTMENT OF TRANSPORTATION
POSTCONSUMER RECYCLED MATERIALS CONTENT CERTIFICATION
Interim CEM-4402 (2007)

Attachment 1

| (a) | (b) | (c) |
|---|---|--|
| Material Category | Total Dollar Value of Materials, Recycled and non-Recycled, Provided Under this Contract | <i>If Col (b) > \$0,</i> Percent of Col (b) Composed of Postconsumer Recycled Materials |
| Paper products, including building insulation | \$ | % |
| Printing paper, envelopes, newsprint, brochures | \$ | % |
| Mulch, compost, co-compost, soil amendments, organic erosion control | \$ | % |
| Glass Products | \$ | % |
| Lubricating Oils and Antifreeze (excludes oil and antifreeze used in Contractor-owned vehicles) | \$ | % |
| Plastic Products | \$ | % |
| Paint | \$ | % |
| Tires (excludes tires used on Contractor-owned vehicles) | \$ | % |
| Tire-derived Products (excluding crumb rubber) | \$ | % |
| Tire-derived Products (only crumb rubber produced from US domestic sources) | \$ | % |
| Metal Products, including rebar, pipe, corrugated metal pipe, guardrail elements, girders, steel beams, fasteners, sign panels. | \$ | % |

I certify under penalty of perjury that the information provided is complete and accurate.

Contractor's Signature

Date

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

FHWA-1273—Revised July 5, 2022

Required Contract Provisions Federal-Aid Construction Contracts

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

Attachments

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

I. General

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

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

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

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

Subject to the applicability criteria noted in the following sections, these Agreement provisions shall apply to all work performed on the Agreement 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 Agreement by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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 any other action determined to be appropriate by the contracting agency and FHWA.

Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

Note: The U.S. Department of Labor (USDOL) has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the USDOL and FHWA requirements.

1. Equal Employment Opportunity

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

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

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

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

2. EEO Officer

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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

3. Dissemination of Policy

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

- A. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- B. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within 30 days following their reporting for duty with the contractor.
- C. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- D. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- E. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment

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

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

5. Personnel Actions

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

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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

6. Training and Promotion

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

7. Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- A. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- B. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- C. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

to the contracting agency and shall set forth what efforts have been made to obtain such information.

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment

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

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

10. Assurances Required

- A. The requirements of 49 CFR Part 26 and the Caltrans USDOT-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.
- B. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible.
- C. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- 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 1D** 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. 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 Agreement 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:
- 1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - 2) The classification is utilized in the area by the construction industry; and
 - 3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - 4) 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, USDOL, 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.
 - 5) 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- 6) 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 Agreement 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 asset for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the USDOL, 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 (29 CFR 5.5)

- 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.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- B. 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. 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 Caltrans, the FHWA or the Wage and Hour Division of the USDOL 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.
- 1) 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 Agreement and shall certify the following:
 - a) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - b) 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 29 CFR part 3;
 - c) 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.
 - 2) 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 3B(1)** of this section.
 - 3) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- 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 Caltrans, the FHWA, or the USDOL, 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 Caltrans, 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 (29 CFR 5.5)

- A. Apprentices (programs of the USDOL).

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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 USDOL, 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 USDOL, 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

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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**. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements.

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

6. Subcontracts.

The contractor or subcontractor 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 Agreement as provided in 29 CFR 5.5.

9. Disputes concerning labor standards.

As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the USDOL 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 USDOL, or the employees or their representatives.

10. Certification of Eligibility (29 CFR 5.5)

- A. By entering into this Agreement, 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 Agreement 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.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

2. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. 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 currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the USDOL; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages

The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the USDOL 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. 29 CFR 5.5.

4. Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in **paragraphs 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. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the Agreement) of the total original Agreement 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

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

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

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

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

2. Pursuant to 23 CFR 635.116(a), the Agreement 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 Agreement provisions.
3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Agreement 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 Agreement 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 Agreement. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).
5. The 30 percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.
3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

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

1. Instructions for Certification – First Tier Participants:

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

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

- G. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.
- H. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.
- I. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- J. Except for transactions authorized under **paragraph F** of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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

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

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- 5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
 - 6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).
- B. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

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

- A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.
- D. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.
- F. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:
 - 1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;
 - 2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
 - 3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

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

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

1. During the performance of this Agreement, 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.