

**FOR INFORMATIONAL PURPOSES ONLY-DO NOT USE FOR BIDDING**

**NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS  
 BASE BID  
 Itemized Proposal for: H61587-71G LIDO BOULEVARD REHABILITATION  
 PIN 0761.68  
 ITEMIZED PROPOSAL**

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
201.06	LS	1	CLEARING AND GRUBBING FOR _____				
203.02	CY	45	UNCLASSIFIED EXCAVATION AND DISPOSAL FOR _____				
203.06	CY	160	SELECT FILL (CONTINGENCY) FOR _____				
206.03100010	LF	20	TRAFFIC SIGNAL CONDUIT EXCAVATION AND BACKFILL (CONTINGENCY) FOR _____				
209.11010024	EA	55	TEMPORARY CATCH BASIN INSERTS - TRASH, SEDIMENT AND DEBRIS REMOVAL FOR _____				
304.00010018	SF	170,000	FINE GRADING OF EXISTING SUBBASE FOR _____				
304.10119917	CY	15	SUBBASE COURSE, TYPE 1011-2 FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
404.0001	QU	-	PLANT PRODUCTION QUALITY ADJUSTMENT TO ASPHALT ITEMS FOR <u>TWO THOUSAND FIVE HUNDRED</u> <u>ZERO CENTS</u> <u>DOLLARS</u> <u>CENTS</u>	2500	00		
404.0189	TON	20	TRUING & LEVELING F9, ASPHALT, 80 SERIES COMPACTION FOR _____				
404.0981	TON	360	9.5 F1 TOP COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
404.1989	TON	15	19 F9 BINDER COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
404.2589	TON	35	25 F9 BASE COURSE ASPHALT, 80 SERIES COMPACTION FOR _____				
407.0102	GAL	380	DILUTED TACK COAT FOR _____				
418.7603	LF	3,350	ASPHALT PAVEMENT JOINT ADHESIVE FOR _____				
490.10	SY	4,000	PRODUCTION COLD MILLING OF BITUMINOUS CONCRETE FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
490.30	SY	200	MISCELLANEOUS COLD MILLING OF BITUMINOUS CONCRETE (CONTINGENCY) FOR _____				
502.10010018	LS	1	PORTLAND CEMENT CONCRETE PAVEMENT REPAIR EVALUATION AND MARK-OUT FOR _____				
502.31010018	SY	19,000	FULL-DEPTH PORTLAND CEMENT CONCRETE (PCC) LIFT-OUT FOR _____				
502.32010010	EA	29,200	DRILL AND ANCHOR DOWELS FOR FULL-DEPTH PORTLAND CEMENT CONCRETE PAVEMENT FOR _____				
502.36030018	CY	4,645	PORTLAND CEMENT CONCRETE (PCC) PLACEMENT FOR FULL-DEPTH PAVEMENT REPAIRS FOR _____				
502.36230018	CY	295	PORTLAND CEMENT CONCRETE (PCC) PLACEMENT (HEAVY REINFORCED) FOR FULL-DEPTH PAVEMENT REPAIRS FOR _____				
502.37010018	LF	4,700	TRANSVERSE JOINTS FOR _____				

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ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
502.38010018	LF	9,200	LONGITUDINAL JOINTS FOR _____				
502.44200018	SF	1,560	PCC PAVEMENT PARTIAL DEPTH REPAIRS USING RAPID SETTING CONCRETE REPAIR MATERIAL - SAW CUTTING METHOD FOR _____				
502.90010018	LF	76,400	CLEAN AND FILL CRACKS AND JOINTS IN PORTLAND CEMENT CONCRETE (PCC) PAVEMENT, ASTM D 6690 TYPE IV FOR _____				
502.9210	LF	32,600	SEALING TRANSVERSE JOINTS - HIGHWAY JOINT SEALANT FOR _____				
502.9310	LF	18,800	SEALING LONGITUDINAL JOINTS - HIGHWAY JOINT SEALANT FOR _____				
505.0402	SY	91,500	PRODUCTION DIAMOND GRINDING - PAVEMENT PRESERVATION WITH SLURRY REMOVAL FOR _____				
520.05000010	LF	33,100	SAWCUTTING PCC AND COMPOSITE PAVEMENT FOR _____				

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BASE BID  
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PIN 0761.68  
ITEMIZED PROPOSAL**

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
520.09000010	LF	350	SAW CUTTING ASPHALT CONCRETE FOR _____				
604.07200110	EA	24	SETTING NEW DRAINAGE FRAMES ON EXISTING DRAINAGE STRUCTURES FOR _____				
608.01050109	EA	16	CURB RAMP CONFIGURATION - TYPE 1 FOR _____				
608.02010015	CY	5	UNCLASSIFIED EXCAVATION AND DISPOSAL FOR SIDEWALKS, CURB RAMPS AND CURBS (CONTINGENCY) FOR _____				
608.02020015	CY	5	OPTIONAL TYPE SUBBASE COURSE FOR SIDEWALKS, CURB RAMPS AND CURBS (CONTINGENCY) FOR _____				
608.20	SY	15	SURFACE APPLIED DETECTABLE WARNING UNITS FOR _____				
609.0401	LF	750	CAST-IN-PLACE CONCRETE CURB TYPE VF6 (CONTINGENCY) FOR _____				

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BASE BID  
Itemized Proposal for: H61587-71G LIDO BOULEVARD REHABILITATION  
PIN 0761.68  
ITEMIZED PROPOSAL**

Nassau County Dept. Public Works

85 of 534

Contract No. H61587-71G PIN 0761.68  
Phase 71 - Lido Blvd Rehabilitation

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
685.07200410	LF	6,750	WHITE EPOXY REFLECTORIZED PAVEMENT STRIPES (CROSS HATCHING) - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				
685.07200610	LF	31,600	YELLOW EPOXY REFLECTORIZED PAVEMENT STRIPES - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				
685.07200710	LF	17,000	YELLOW EPOXY REFLECTORIZED PAVEMENT STRIPES (CROSS HATCHING) - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				
697.03	DC	250,000	FIELD CHANGE PAYMENT FOR <u>ONE DOLLAR</u> <u>ZERO CENTS</u> DOLLARS CENTS	1	00		
698.04	DC	20,000	ASPHALT PRICE ADJUSTMENT FOR <u>ONE DOLLAR</u> <u>ZERO CENTS</u> DOLLARS CENTS	1	00		
698.05	DC	8,000	FUEL PRICE ADJUSTMENT FOR <u>ONE DOLLAR</u> <u>ZERO CENTS</u> DOLLARS CENTS	1	00		
699.040001	LS	1	MOBILIZATION (4%) FOR _____				

_____ _____ _____				
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CONTRACTOR: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
BY: \_\_\_\_\_

**NOTE: Nassau County reserves the right to increase or decrease quantity amounts prior to award or after award of bid.**

## **SPECIAL NOTE**

### **PG BINDER AND MIX DESIGN LEVEL**

Requirements of this note apply to all Section 404 Asphalt Pavement items in this contract.

#### **PG BINDER**

Use polymer or Terminal Blend Crumb Rubber modified **PG 64E-22** (Extreme) meeting the requirements of AASHTO M 332, *Standard Specification for Performance Graded Asphalt Binder using Multiple Stress Creep Recovery (MSCR)*, for the production of asphalt mixtures for this project. In addition, the binder grade must also meet the **elastomeric** properties as indicated by one of the following equations for %R<sub>3.2</sub>:

1. For  $J_{nr3.2} \geq 0.1$ ,  $\%R_{3.2} > 29.371 * J_{nr3.2}^{-0.2633}$
2. For  $J_{nr3.2} < 0.1$ ,  $\%R_{3.2} > 55$

Where:

R<sub>3.2</sub> is % recovery at 3.2 kPa

J<sub>nr 3.2</sub> is the average non-recoverable creep compliance at 3.2 kPa

When terminal blend CRM PG binder is used, the following shall apply:

- Crumb rubber particles shall be finer than #30 sieve size.
- The CRM PG binder shall be storage-stable and homogeneous.
- The Dynamic Shear Rheometer (DSR) shall be set at 2-mm gap.
- The CRM PG binder shall be 99% free of particles retained on the 600 µm sieve as tested in accordance with Section 5.4 of M 332.

Use of poly-phosphoric acid (PPA) to modify the PG binder properties is prohibited for mixtures containing limestone, limestone as an aggregate blend component, limestone as a constituent in crushed gravel aggregate, or recycled asphalt pavement (RAP) that includes any limestone. This prohibition also applies to the use of PPA as a cross-linking agent for polymer modification.

#### **MIX DESIGN**

The mixture designs must be developed in accordance with the criteria specified in the asphalt pavement items that are appropriate for the Mixture Design Level of **75 Gyration**s.

**Note:** The PG binder for this project will be modified with polymer or CRM additives to meet the requirements stated above. Handling of the asphalt mixture shall be discussed at pre-construction and pre-paving meetings.

*[Designer Note:*

*Designer shall check the website at the link below to ensure the most current PG Binder Note is being used.]*

**[HMA Special Notes \(ny.gov\)](#)**

## **HIGH EARLY STRENGTH (HES) CONCRETE TESTING**

During regular business hours and regional laboratory operating hours, fabricated HES samples shall be tested at the Regional lab or a lab as designated by Regional Technical Services. If HES Concrete samples are to be tested during hours other than regular business hours and non-regional laboratory operating hours, then compressive strength tests shall be performed by an agency accredited by the AASHTO Accreditation Program (AAP) in the field of construction materials testing of portland cement concrete to perform compressive strength testing. The Engineer, or the Engineer's representative, will complete the Concrete Cylinder Report as cylinders are cast and witness testing.

When High Early Strength (HES) Cylinders are to be tested for opening to traffic during non-regular business hours and non-operating hours of Regional Lab, a second set of (4"X8") cylinders shall be sent to and tested at the regional lab during next regular business hours for verification testing and acceptance for payment. NYS DOT lab testing will take place within 48 hours of opening to traffic.



### **SUBBASE MATERIAL**

Under Item **304.10119917** - Subbase Course Type 1011-2, Alternate C (Reclaimed Asphalt Pavement) specified for material Types 1, 3 and 4 under Subsection 304-2.02 of the Standard Specifications, shall not be used as a subbase material beneath Full Depth Asphalt pavement and/or Portland Cement Concrete pavement.

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**PHASE 71 - LIDO BLVD REHABILITATION  
LIDO BOULEVARD, LIDO BEACH  
NASSAU COUNTY  
PIN: 0761.68  
H61587-71G**

**LIST OF SPECIAL SPECIFICATIONS  
(PS&E Submission)**

ITEM	DESCRIPTION	UNIT
206.03100010	TRAFFIC SIGNAL CONDUIT EXCAVATION AND BACKFILL (CONTINGENCY)	LF
209.11010024	TEMPORARY CATCH BASIN INSERTS - TRASH, SEDIMENT AND DEBRIS REMOVAL	EA
304.00010018	FINE GRADING OF EXISTING SUBBASE	SF
304.10119917	SUBBASE COURSE, TYPE 1011-2	CY
502.10010018	PORTLAND CEMENT CONCRETE PAVEMENT REPAIR EVALUATION AND MARK-OUT	LS
502.31010018	FULL-DEPTH PORTLAND CEMENT CONCRETE (PCC) LIFT-OUT	SY
502.32010010	DRILL AND ANCHOR DOWELS FOR FULL-DEPTH PORTLAND CEMENT CONCRETE PAVEMENT	EA
502.36030018	PORTLAND CEMENT CONCRETE (PCC) PLACEMENT FOR FULL-DEPTH PAVEMENT REPAIRS	CY
502.36230018	PORTLAND CEMENT CONCRETE (PCC) PLACEMENT FOR FULL-DEPTH PAVEMENT REPAIRS	CY
502.37010018	TRANSVERSE JOINTS	LF
502.38010018	LONGITUDINAL JOINTS	LF
502.44200018	PCC PAVEMENT PARTIAL DEPTH REPAIRS USING RAPID SETTING CONCRETE REPAIR MATERIAL - SAW CUTTING METHOD	SF
502.90010018	CLEAN AND FILL CRACKS AND JOINTS IN PORTLAND CEMENT CONCRETE (PCC) PAVEMENT, ASTM D 6690 TYPE IV	LF
520.05000010	SAWCUTTING PCC AND COMPOSITE PAVEMENT	LF
520.09000010	SAWCUTTING ASPHALT CONCRETE	LF
604.07200110	SETTING NEW DRAINAGE FRAMES ON EXISTING DRAINAGE STRUCTURES	EA
608.01050109	CURB RAMP CONFIGURATION - TYPE 1	EA
608.02010015	UNCLASSIFIED EXCAVATION AND DISPOSAL FOR SIDEWALKS, CURB RAMPS AND CURBS (CONTINGENCY)	CY
608.02020015	OPTIONAL TYPE SUBBASE COURSE FOR SIDEWALKS, CURB RAMPS AND CURBS (CONTINGENCY)	CY
655.05020010	FRAMES AND COVERS FOR SANITARY SEWER MANHOLES	EA
685.03120018	RAISED REFLECTORIZED SNOWPLOWABLE PAVEMENT MARKERS (TWO-WAY YELLOW)	EA
685.07200110	WHITE EPOXY REFLECTORIZED PAVEMENT STRIPES - 20 MILS (WET NIGHT VISIBILITY SPHERES)	LF
685.07200210	WHITE EPOXY REFLECTORIZED PAVEMENT LETTERS - 20 MILS (WET NIGHT VISIBILITY SPHERES)	EA
685.07200310	WHITE EPOXY REFLECTORIZED PAVEMENT SYMBOLS - 20 MILS (WET NIGHT VISIBILITY SPHERES)	EA
685.07200410	WHITE EPOXY REFLECTORIZED PAVEMENT STRIPES (CROSS HATCHING) - 20 MILS (WET NIGHT VISIBILITY SPHERES)	LF
685.07200610	YELLOW EPOXY REFLECTORIZED PAVEMENT STRIPES - 20 MILS (WET NIGHT VISIBILITY SPHERES)	LF
685.07200710	YELLOW EPOXY REFLECTORIZED PAVEMENT STRIPES (CROSS HATCHING) - 20 MILS (WET NIGHT VISIBILITY SPHERES)	LF

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**ITEM 206.03100010 - TRAFFIC SIGNAL CONDUIT EXCAVATION AND BACKFILL**

DESCRIPTION. This work shall consist of the excavation and necessary backfill required for traffic signal conduits. All such excavation shall be unclassified excavation as defined in subsection 203-1.01.

The work shall include saw cutting any existing portland cement concrete and asphalt concrete top surfaces and the restoration of any pavement, shoulder, and sidewalk courses, subcourses, curbs, drives, lawns and other top surfaces.

MATERIALS. Materials for the restoration of top surfaces shall be as indicated in the plans and as approved by the Engineer.

CONSTRUCTION DETAILS. The requirements of subsection 206-3 shall apply with the following additions:

When the Contractor is required to excavate through portland cement concrete and asphalt concrete pavement, sidewalk, curb, or other top surfaces, he shall saw cut along neat lines as shown in the plans or as ordered by the Engineer. An approved power saw shall be used to saw cut to the depth specified in the plans or as directed by the Engineer.

The conduit excavation and backfill, and the restoration of top surface courses shall also conform to the applicable Notes and Details shown in the plans.

Any damage to existing pavement, sidewalk, curb, or other facilities caused by the Contractor's operations shall be repaired by the Contractor to the satisfaction of the Engineer.

METHOD OF MEASUREMENT. Subsection 206-4.03 shall apply.

BASIS OF PAYMENT. The unit price bid per linear foot shall include the cost of furnishing all labor, materials and equipment necessary to complete the work including excavation, backfill, saw cutting, and restoring any pavement, shoulder, and sidewalk courses, subcourses, curbs, drives, lawns and other top surfaces.

Any repairs to existing pavement, sidewalk, curb, or other facilities made necessary by the Contractor's operations shall be done to the satisfaction of the Engineer at no additional cost to the State.

**ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)**

**DESCRIPTION:**

The work shall consist of furnishing, installing, maintaining (removing, disposal of debris and resetting), replacing (if needed), and disposing (at end of contract) a temporary catch basin insert at the locations indicated in and according to the contract documents, and as directed by the Engineer.

The work shall also consist of removing and storing an existing temporary catch basin insert prior to a catastrophic storm event (e.g., flooding), and reinstalling it after the event at the locations indicated in and according to the contract documents, and as directed by the Engineer.

Acronyms

CBI – Temporary Catch Basin Insert

Temporary removal, storage and reinstallation of temporary catch basin inserts does not include the cost of a new temporary catch basin insert.

**MATERIALS:**

The following sections of the standard specification shall apply:

Temporary Catch Basin Insert 713-21

**CONSTRUCTION DETAILS**

The following section of the standard specifications shall apply:

Soil Erosion and Sediment Control 209-3.01

with the following exceptions:

- Torn or punctured geotextile must be replaced (see Maintenance below)
- Sediment deposition removed from the CBI shall be disposed of in accordance with §107-10 E.

Installation: Install the CBI according to manufacturer’s instructions.

Inspection: Using the most restrictive inspection criteria listed below, the Contractor shall inspect each CBI:

- daily,
- after a rainfall event of 0.5” or more per twenty-four (24) hour period,
- as per manufacturer’s instructions, and
- as per the conditions of the Stormwater Pollution Prevention Plan (SWPPP) (if the contract includes one).

Maintenance: Maintenance shall include the following:

- Removal of all accumulated sediment and debris from the vicinity of the CBI after each rainfall event of 0.5” or more per twenty-four (24) hour period and prior to removal of the insert for maintenance.
- Removal of CBI according to manufacturer’s instructions.

## **ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)**

- Emptying the CBI when the CBI's containment area is more than one third (1/3) full or before the sediment/trash/debris reaches the overflow openings. The Contractor shall ensure that the CBI is not so full that removing it causes the geotextile to rip, tear or become non-functioning. CBIs damaged during sediment removal shall be replaced at the Contractor's expense. The Engineer will determine if a damaged CBI warrants replacement. Sediment and/or debris that has been released into the drainage structure shall be removed by the Contractor and disposed of as below.
  - Refer to the manufacturer's instructions for emptying and re-installing the CBI. Removal of trash, sediment and debris from the CBI shall be done in a manner that ensures no trash, sediment or debris will enter an unprotected drainage structure.
- Disposal of the removed sediment shall occur at an upland location away from all stormwater conveyances.
  - Trash shall be disposed of according to §107-10 E. of the standard specifications.
- If a CBI's fabric or strap is torn,
  - dispose of the sediment and debris contained within the unit according to this specification, and
  - replace the entire CBI. A CBI shall be replaced at no additional cost to the state.
- When CBI servicing results in a non-functioning or poorly functioning CBI, the CBI shall be replaced at no additional cost to the state. The Engineer will determine if a CBI is non-functioning or poorly functioning.
- CBIs shall be removed prior to winter shut down. Re-installation of the CBIs shall occur prior to ground disturbance or first thaw in the following spring, whichever occurs first, and according to manufacturer's instructions.

Emergency Removal, Storage and Reinstallation: Emergency removal, storage and reinstallation shall be performed in association with catastrophic events (e.g. storms and flooding) as follows:

- As directed in consideration of forecasted events (e.g. moderate or major flood warnings) in impacted urban or residential locations where flooding is likely to result in hazardous public conditions.
- Removal, storage, and reinstallation as specified and applicable under Maintenance above. This includes replacing any damaged, poorly functioning, or non-functioning CBI.
- CBIs removed for emergency flooding events shall be reinstalled prior to resuming construction.

CBIs shall be removed according to §209-3.01 and disposed of according to §107-01 E. after all soil disturbance areas have been fully stabilized with an established, permanent, and approved vegetative cover at a uniform density of eighty percent (80%).

### **METHOD OF MEASUREMENT**

Temporary Catch Basin Insert. The work will be measured as the number of each CBI furnished, installed, maintained, replaced, and disposed.

Temporary Catch Basin Insert Emergency Removal and Reinstallation. The work will be measured as the number of each CBI removed, stored, and reinstalled.

**ITEM 209.11XXNN24 – TEMPORARY CATCH BASIN INSERT (CBI)**

**BASIS OF PAYMENT**

Temporary Catch Basin Insert. The unit price bid for each CBI furnished, installed, maintained, replaced, and disposed shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Temporary Catch Basin Insert Emergency Removal and Reinstallation. The unit price bid for each CBI removed, stored, and reinstalled shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Progress payments will be made at fifty percent (50%) of the unit price bid upon installation of each CBI. The remaining fifty percent (50%) will be paid after soil disturbance areas have been fully stabilized with an established, permanent, and approved vegetative cover at a uniform density of eighty percent (80%) and the CBI has been removed. No progress payments are offered for the emergency removal and reinstallation of CBI.

Payment will be made under:

<b>Item Number</b>	<b>Description</b>	<b>Unit</b>
209.11010024	Temporary Catch Basin Insert – Trash, Sediment, and Debris Removal	EA
209.11020024	Temporary Catch Basin Insert –Trash, Sediment and Debris Removal, plus Oil and Hydrocarbon Removal	EA
209.11030024	Oil and Hydrocarbon Absorbent Pouches for Temporary Catch Basin Insert	EA
209.11040024	Temporary Removal, Storage and Reinstallation of a Temporary Catch Basin Insert	EA



**ITEM 304.00010018 - FINE GRADING OF EXISTING SUBBASE**

**DESCRIPTION.** Prepare a fine grade on the existing subbase course to receive new pavement and/or shoulders. Clean, regrade, shape, and compact the subbase surface to the line and grade in the contract documents.

**MATERIALS.**

Cushion Sand ..... §703-06

**CONSTRUCTION DETAILS.**

Remove and dispose of sod, permeable base, concrete, and/or other loose, unsuitable or excess material.

Grade the existing surface to a uniform cross slope such that, after compaction, the top surface is at true grade and surface at any location, ± ¼ inch. Remove excess material where the existing subbase is high or has insufficient slope. Build up the existing subbase with cushion sand where the existing subbase is low or has excessive cross slope.

Compact the subbase to the satisfaction of the Engineer using equipment meeting §203-3.03C, Compaction.

Do not allow traffic on the exposed subbase.

**METHOD OF MEASUREMENT.** The work will be measured for payment as the number of square feet of subbase satisfactorily fine graded, measured to the nearest square foot.

**BASIS OF PAYMENT.** Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Fine Grading of Existing Subbase. No additional payment will be made for extra work required to repair damage to the adjacent pavement or subbase that occurred during any operation. Additional payment will be made if the original repair area did not completely extend into sound pavement or stable subbase. Pavement and shoulder removal are paid for under separate pay items.

**ITEM 304.10119917 - SUBBASE COURSE, TYPE 1011-2**

All of the requirements of Section 304 *Subbase Course* shall apply except as herein modified:

**MATERIALS**

Material shall conform to the requirements of §733-04 *Subbase Course* with the addition of the following requirement:

**Natural Material.** Natural material obtained from sources located in Richmond, Kings, Queens, Nassau and Suffolk Counties shall conform to the following gradation:

<b>Sieve Size Designation</b>	<b>Percentage Passing by Weight</b>
2 in.	100
1 in.	80-100
¼ in.	50-85
No. 10	30-70
No. 40	15-40
No. 200	6-12

Natural material obtained from sources other than those listed above shall conform to the gradation requirements of Table 733-04A *Subbase Gradation* in §733-04B. *Gradation*.

**BASIS OF PAYMENT**

*Payment will be made under:*

<b>Item No.</b>	<b>Item</b>	<b>Pay Unit</b>
304.10119917	Subbase Course, Type 1011-2	Cubic Yard

**ITEM 502.10010018 - PORTLAND CEMENT CONCRETE PAVEMENT REPAIR  
EVALUATION AND MARK-OUT**

**DESCRIPTION.** Evaluate and tabulate pavement repair needs, develop a repair referencing system, and mark repair boundaries.

**MATERIALS.** None specified.

**CONSTRUCTION DETAILS.**

**Reference Slabs.** Develop a referencing system for the pavement slabs within the project limits and mark every 5th slab (maximum) with a unique designation visible from a shoulder. Maintain the referencing system throughout the project duration. Re-mark slabs with the same designations after diamond grinding, if necessary. In addition to marking slabs, mark and maintain plan stationing on or near the pavement to correlate repairs to the plans.

**Pavement Evaluation and Mark-out.** Coordinate evaluation and mark-out to ensure the Engineer's presence. Recommend a repair type and limits for each repair area identified in the contract documents. Use the repair items, quantities, and limits in the contract documents as a starting point for the repair recommendations. Modifying or grouping repairs is subject to the approval of the Engineer. Mark the repair type and limits on the pavement after approval by the Engineer. Ensure that the marked repair is not in conflict with the contract's maintenance and protection of traffic plan.

After repair types and limits are marked, develop a repair table for the Engineer's review and verification which includes station, slab designation, repair type, and quantity. If repair types are detailed in the contract plans, note additions, deletions, and changes from the plans. The Engineer will review the repair table within 2 work days of receipt. If necessary, modify the table until it meets the Engineer's approval and note any unresolved differences with the Engineer in repair type or quantity. Refer to the appropriate specifications for quantity determination.

Make no repairs until the Engineer approves the repair table and mark-outs. Do not alter the table or mark outs without the Engineer's approval. Any alteration, addition, or subtraction requires re-submission and approval of the Engineer.

**Full-Depth Repair Joint Layout.** Transverse joint layout for full-depth repairs is the Contractor's responsibility. Submit a proposed layout for multiple slab replacements and obtain the Engineer's approval before placing concrete.

**METHOD OF MEASUREMENT.** The work under PCC Pavement Repair Evaluation and Mark-out will be measured for payment on the lump sum basis.

**BASIS OF PAYMENT.** Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the lump sum bid for PCC Pavement Repair Evaluation and Mark-out. No additional payment will be made for re-tabulating or re-marking concrete repair areas.

**ITEM 502.31010018 - FULL-DEPTH PORTLAND CEMENT CONCRETE (PCC) LIFT-OUT DESCRIPTION.** Mark the area to be lifted, saw cut, lift, and dispose of:

- PCC.
- Permeable base.
- PCC patched with hot mix asphalt (HMA).
- Full-depth HMA within the marked area.

**MATERIALS.**

Anchoring Material and Dispensing Equipment. Use a pourable, 2 component, 100% solids structural epoxy meeting §701-07, Anchoring Materials - Chemically Curing, dispensed:

- From side-by-side cartridges by manual or pneumatically powered injection guns.
- Through a static nozzle that homogeneously mixes the material without any hand mixing.

**CONSTRUCTION DETAILS.** Schedule all full-depth repair operations (from lift-out to concrete placement) to minimize the total time to complete any individual repair. As the time frame from saw cutting to placement increases, the potential for damage to the surrounding pavement scheduled to remain in place also increases, particularly in hot weather or as the temperature rises. No time frame to completion is specified in this item due to contract variability.

Mark the boundaries of the area to be lifted out. Do not cut until the Engineer approves the marked boundaries. Saw cut full-depth around the removal area at the approved boundaries, including through the permeable base, if any. These cuts will become the transverse and longitudinal joints that define the repair. Use a diamond blade saw equipped with cutting guides, blade guards, water cooling systems, dust controls, and cut depth control. Set the cut depth to minimize subbase disturbance. Make straight saw cuts around the repair perimeter that result in smooth faces that are perpendicular to the pavement surface. Make transverse cuts perpendicular to the longitudinal joint.

Over cut the saw cut intersections a distance equal to the pavement thickness, including the permeable base, if any. After lift-out and before placing the full-depth repair material, fill the over cuts in concrete to remain in place with anchoring material. Place the anchoring material as deep as possible into the over cut, starting at the deepest portion of the over cut and proceeding to the shallowest portion. Block the deepest portion of the over cut such that the anchoring material does not enter into the lift-out area. Finish the anchoring material flush to the pavement surface. When using new cartridges of anchoring material, ensure that the initial material exiting the nozzle appears uniformly mixed. If it is not uniformly mixed, waste the material until uniformly mixed material extrudes.

Additional saw cuts within the repair boundaries to facilitate lift-out without damaging the repair boundaries are permitted. Use any saw for these cuts. Set the cut depth to minimize subbase disturbance. Do not over cut into adjacent concrete that is not scheduled for removal. (Be advised that the longer partial-width cuts remain in place without removal and replacement, the greater the potential for damaging the surrounding concrete scheduled to remain in place, particularly in hot weather or as temperatures are rising. No payment will be made for repairing damage to the surrounding pavement scheduled to remain in place.) Over cutting is allowed if the adjacent concrete is scheduled for removal.

If traffic is to be maintained on the pavement after cutting, remove all debris from the pavement before traffic is restored.

**ITEM 502.31010018 - FULL-DEPTH PORTLAND CEMENT CONCRETE (PCC) LIFT-OUT**

Drill holes and insert lift pins into the concrete to be removed. Lift and dispose of the concrete such that there is:

- No damage to the surrounding pavement to remain in place.
- Minimal disturbance to the subbase.
- No damage to any adjacent curb, drainage structure, or utility.

Pavement sections too deteriorated to lift-out as determined by the Engineer and full-depth HMA may be excavated rather than lifted. Excavate the pavement such that there is minimal disturbance to the subbase.

Dispose of all material in accordance with §203-3.02B, Disposal of Surplus Excavated Material.

**METHOD OF MEASUREMENT.** The work will be measured for payment as the number of square yards of pavement satisfactorily lift-out or excavated, measured to the nearest 0.1 yd<sup>2</sup> based on the Engineer-approved removal areas marked on the pavement prior to saw cutting.

**BASIS OF PAYMENT.** Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Full-Depth PCC Lift-Out. No additional payment will be made for:

- Extra work required to repair damage to the adjacent pavement that occurred during any operation.
- Additional saw cuts made inside the repair boundaries to facilitate lift-out.

Additional payment will be made if the original repair area did not completely extend into sound concrete.

Subbase removal and replacement or drainage enhancement identified before or after removal are paid under separate items.

# **ITEM 502.32010010 - DRILL AND ANCHOR DOWELS FOR FULL-DEPTH PORTLAND CEMENT CONCRETE PAVEMENT REPAIRS**

## **DESCRIPTION**

Drill holes and anchor dowels into full-depth saw cut concrete faces that will become transverse joints.

## **MATERIALS AND EQUIPMENT**

Dowels. Obtain dowels from a supplier appearing on the Approved List for §705-15, Transverse Joint Supports. Use 18 inch long, 1-½ inch diameter, smooth, epoxy-coated, Grade 60 steel dowels coated with a bond breaker. Use an epoxy coating appearing on the Approved List for “Epoxy Coatings for Longitudinal Joint Ties” or “Epoxy Coatings for Steel Reinforcing Bars” that is applied by an applicator appearing on the Approved List for “Applicators for Steel Reinforcing Bars”. At least 7 days prior to drilling, provide the Engineer:

- The name and address of the joint support assembly supplier.
- Material certification from the supplier that dowels meet the “Tests” and “Material Requirements” portions of §705-15, except Grade 60 steel is supplied.
- Material certification from the rolling mill as to the type and grade of steel used.
- The brand of epoxy coating and the name and address of the Manufacturer.
- The name and address of the epoxy coating applicator.
- The brand of bond breaker and the name and address of the Manufacturer.
- Material certification from the epoxy coating applicator that the bars have been coated, tested, and meet the requirements of §705-14, Longitudinal Joint Ties.

Epoxy coating field repairs are not permitted. The Department may perform supplementary sampling and testing of the dowels to ensure conformance with §705-14 and §705-15.

Anchoring Material and Dispensing Equipment. Use a pourable, 2 component, 100% solids structural epoxy meeting § 701-07, Anchoring Materials - Chemically Curing, dispensed:

- From side-by-side cartridges by manual or pneumatically powered injection guns.
- Through a static nozzle that homogeneously mixes the material without any hand mixing.

Drills. Use hydraulic gang drills with a minimum of 2 independently powered and driven drills. Use tungsten carbide drill bits. Control the forward and reverse travel of the drills by mechanically applied pressure. Mount the drill on a suitable piece of equipment such that it is quickly transported and positioned. Rest and reference the drill rig frame on and to the pavement surface such that the drilled holes are cylindrical, perpendicular to the surface being drilled, and repeatable in terms of position and alignment on the surface being drilled. Hand-held drills are not permitted.

Grout Retention Disk. Use plastic grout retention disks, 1/8 inch thick, of sufficient diameter to prevent grout from entering the joint. The hole in the center of the disk must have the same diameter as the dowel.

## **CONSTRUCTION DETAILS**

Drilling Holes. Drill holes 12 inch apart on center across the full width of the repair. Locate end holes 6 -12 inch from the longitudinal repair boundaries.

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Determine the location and length of longitudinal joint ties in the concrete to remain in place outside the repair area. Use a pachometer or other device capable of locating steel embedded in concrete. If a longitudinal joint tie is within 12 inch of the surface being drilled, drill the outer holes 3 – 4 inch from the end of the tie.

Drill holes such that:

- The hole diameters are in accordance with the anchoring material Manufacturer's written recommendations. Provide those recommendations to the Engineer before drilling any holes.
- The hole depth is 9 inch (+3/8in- 0 in).
- When the dowels are anchored, the longitudinal axes of the protruding dowels are parallel to the pavement centerline, the pavement surface, and each other,  $\pm 1/8$  in, measured at the saw cut face and the dowel end.
- When the dowels are anchored, they protrude 8-21/32 inch – 9 inch from the saw cut face.

Extend the full depth repair boundaries as indicated in the contract documents if drilling cracks or damages pavement to remain in place. Replace worn bits when necessary to ensure the proper hole diameter is drilled.

Cleaning Holes. Follow the anchoring material Manufacturer's written recommendations for cleaning the holes. Provide those recommendations to the Engineer. As a minimum, clean the drilled holes with oil-free and moisture-free compressed air. The Engineer will check the compressed air stream purity with a clean white cloth. Use a compressor that delivers air at a minimum of 120 ft<sup>3</sup> per minute and develops a minimum nozzle pressure of 90psi. Insert the nozzle to the back of the hole to force out all dust and debris.

Dowel Installation. When using new cartridges of anchoring material, ensure that the initial material exiting the nozzle appears uniformly mixed. If it is not uniformly mixed, waste the material until uniformly mixed material extrudes. Place the anchoring material at the back of the hole using a nozzle of sufficient length. Push the dowel into the hole while twisting such that the air pocket within the hole is heard to burst and the anchoring material is evenly distributed around the dowel. Use sufficient amounts of anchoring material such that it slightly extrudes out the hole as the dowel is inserted. Place a grout retention disk over the dowel and tight against the exposed concrete face such that the anchoring material does not enter the joint.

### **METHOD OF MEASUREMENT**

The work will be measured for payment as the number of dowels satisfactorily anchored.

### **BASIS OF PAYMENT**

Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Drill and Anchor Dowels for Full-Depth PCC Pavement Repairs. No additional payment will be made for extra work required to repair damage to the adjacent pavement that occurred during drilling.

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**ITEM 502.36RC0018 - PORTLAND CEMENT CONCRETE (PCC) PLACEMENT FOR FULL-DEPTH PAVEMENT REPAIRS**  
**ITEM 502.37010018 - TRANSVERSE JOINTS**  
**ITEM 502.38010018 - LONGITUDINAL JOINTS**

**DESCRIPTION.** Place Class C, Class F, or High-Early-Strength (HES) PCC as indicated in the contract documents in a previously prepared full-depth repair area.

**MATERIALS AND EQUIPMENT.**

Portland Cement Concrete (Class C and Class F) .....	501
High-Early-Strength (HES) Concrete .....	502-2.02
Portland Cement Treated Permeable Base.....	502-2.03
Longitudinal Joint Ties . .....	.705-14
Transverse Joint Supports.....	.705-15
Wire Fabric for Concrete Reinforcement .....	709-02
Epoxy-Coated Bar Reinforcement, Grade 60 .....	.709-04
Quilted Covers (for Curing).....	.711-02
Plastic Coated Fiber Blankets (for Curing).....	.711-03
Polyethylene Curing Covers (White Opaque) .....	.711-04
Membrane Curing Compound ... ..	.711-05
Form Insulating Materials for Winter Concreting .....	711-07
Water .....	.712-01

HES concrete mix design and all details related to HES concrete production and discharge must be approved by the Regional Materials Engineer before placement.

Transit Mix HES Concrete. Accelerating admixtures may be batched into the concrete at the plant in accordance with §501-2.03F, Admixture Dispensing Systems, or added at the site depending on the amount of acceleration required and the haul time. When adding accelerating admixtures at the site, equip truck mixers with an air pressurized tank that:

- Contains the correct volume of admixture (for the volume of concrete in the truck) dispensed through the plant’s Admixture Dispensing System.
- Discharges the required admixture quantity into the truck mixer drum in less than 1 minute.
- Has a clear plastic tank output hose that leads into the truck mixer drum.
- Has a properly working relief valve.

Twice daily, or more frequently if weather conditions change significantly as determined by the Engineer, determine the fine and coarse aggregate moisture contents. Compute the corresponding water added to the concrete in the truck from aggregate moisture. Subtract that quantity, as well as the water portion of the admixture in the tank and water added at the plant, from the design water for the truck. Submit these calculations to the NYSDOT plant inspector for approval. Upon approval, write the maximum volume of water to be added to the truck at the site on the delivery ticket. Upon arrival at the site, provide the delivery ticket to the Engineer.

Discharge the accelerating admixture into the truck mixer drum during or after any water additions at the site. Do not add more water than the maximum volume indicated on the delivery ticket. Add all of the



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accelerating admixture in 1 uninterrupted operation in 1 minute or less. Apply a maximum of 200 total mixing revolutions before discharge.

Truck Mix HES Concrete. Add the accelerating admixture and water at the site. Equip trucks with an air pressurized tank for accelerating admixtures as described above in Transit Mix HES Concrete and an in-line water flow meter that:

- Resets easily to "0".
- Is mounted to allow easy reading.
- Withstands water temperatures up to 200°F.
- Is equipped with air strainers capable of removing entrapped air within the system.
- Has a batching delivery tolerance of 1% by weight or volume.
- Has a manufacturer’s certified flow rate capacity of 70 gpm.
- Has a minimum actual flow rate of 50 gpm.

The Regional Materials Engineer will measure the actual flow rate and inspect the flow meter prior to use. Do not place any concrete without the Regional Materials Engineer’s approval.

Twice daily, or more frequently if weather conditions change significantly as determined by the Engineer, determine the fine and coarse aggregate moisture contents. Compute the corresponding water added to the concrete in the truck from aggregate moisture. Subtract that quantity, as well as the water portion of the admixture in the tank, from the design water for the truck. Submit these calculations to the NYSDOT plant inspector for approval. Upon approval, write the exact volume of water to be added to the truck at the site on the delivery ticket. Upon arrival at the site, provide the delivery ticket to the Engineer.

Before adding water into the truck mixer, execute twenty dry revolutions at 12 to 18 rpm and reset the flow meter to 0. Add water in 1 uninterrupted operation. No water is to be removed from the truck mixer for any purpose while water is being added to the drum. After the required water designated on the delivery ticket has been added to the concrete in the truck, add all the accelerating admixture in 1 uninterrupted operation in 1 minute or less. Apply a maximum of 200 mixing revolutions before discharge.

Use equipment meeting:

Forms .....	§502-2.04B1
Paving Irregular Areas ..	§502-2.04B3
Vibrators .....	§502-2.04C
Permeable Base Paving Equipment .....	§502-2.04D
Saw Cutting Equipment .....	§502-2.04E
Curing Compound Applicators ..	§502-2.04F

**CONSTRUCTION DETAILS.** Apply the following from Section 502, Portland Cement Concrete Pavement, as modified herein:

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Weather Limitations..... §502-3.01  
Portland Cement Treated Permeable Base..... §502-3.03  
    Use permeable base if the pavement being repaired was constructed with permeable base or if shown in the contract documents. Place permeable base 4 inches thick. Apply fixed form paving requirements.  
Fixed Form Paving..... §502-3.05  
    Consider full-depth repairs to be irregular areas.  
Joint Construction..... §502-3.06  
    Apply a bond breaker, such as form oil, to untied longitudinal joints immediately before placing concrete.  
Finishing..... §502-3.09  
    Finish short repairs (those less than the length of the finishing equipment) transversely.  
Texturing..... §502-3.10  
    Do not texture the plastic concrete if it will be diamond ground. The Engineer may require longitudinal astroturf drag if that was the original pavement texture.  
Curing..... §502-3.11  
Pavement Protection..... §502-3.13  
Damaged or Defective Concrete..... §502-3.14  
Hardened Surface Test.. §502-3.15  
    If the pavement is to be diamond ground, the maximum deviation is 3/8 inch in 10 feet. If the pavement will not be diamond ground, the maximum deviation is 1/8 inch in 10 feet.  
Opening to Traffic..... §502-3.18  
    When determining concrete strength for opening to traffic, apply the following rather than §502-3.18C, Project Strength Determination:

Project Strength Determination. Provide an ACI Certified Concrete Field Testing Technician, Grade I, or higher, to cast all cylinders. Unless otherwise noted in the contract documents, use an agency accredited by the AASHTO Accreditation Program (AAP) in the field of construction materials testing of portland cement concrete to perform compressive strength testing. Cast and test in the presence of the Engineer, or the Engineer's representative. Provide acceptable proof of ACI Certification and AASHTO Accreditation to the Engineer before placing any concrete. The Engineer, or the Engineer's representative, will complete the Concrete Cylinder Report as cylinders are cast and tested.

Cast a minimum of 3 cylinder pairs (6 total) from each scheduled placement operation in accordance with Materials Method 9.2, Field Inspection of Portland Cement Concrete. Cast each pair from different delivery trucks with 1 of the 3 pairs cast from the last truck of the operation. Develop an Engineer-approved marking system that allows a cylinder to be readily associated with the corresponding placement location and placement time. Mark the cylinders and place them adjacent to the pavement under similar curing conditions. Determine the concrete compressive strength in accordance with ASTM C39, Standard Test Method for Compressive

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Strength of Cylindrical Concrete Specimens. Test all cylinder pairs at the same time relative to when they were cast. The testing time must be within the time frame needed to open the last concrete placed in the operation to traffic. The placement may be opened to traffic if all the following apply:

- Average compressive strength of all cylinder pairs exceed 2500 PSI.
- Average compressive strength of each cylinder pair exceeds 2000 PSI.
- Appropriate time frame has elapsed for the entire area to be opened.

If these conditions are not met, test 3 additional cylinder pairs at a later time, provided the appropriate number of additional cylinders were cast and the placement has not been opened to traffic. If the above conditions are not met after additional testing, or, if the required number of additional cylinders were not cast, open the placement to traffic after 5 days, or when directed by the Engineer, provided this time frame is not in conflict with the work zone closure time restrictions stipulated in the contract documents. If the placement is opened to traffic (in accordance with the work zone closure time restrictions stipulated in the contract documents) before it has achieved the required strength, the placement will be considered Damaged or Defective Concrete and will be replaced at no additional cost to the State.

Contract testing for 28 day compressive strength is not required. If subsequent trial batches are required, the Engineer may waive the 28 day compressive strength testing.

**METHOD OF MEASUREMENT.**

Portland Cement Treated Permeable Base. The work will be measured for payment as the number of cubic yards of permeable base satisfactorily placed, measured to the nearest 0.1 yard<sup>3</sup>, based on the Engineer-approved repair area marked on the pavement prior to repair and the thickness of permeable base placed.

Portland Cement Concrete, Unreinforced, All Classes. The work will be measured for payment as the number of cubic yards of concrete satisfactorily placed, measured to nearest 0.1 yard<sup>3</sup>, based on the Engineer-approved repair area marked on the pavement prior to repair and the thickness of concrete placed. Deductions, and separate payment, will be made for catch basins, manholes, or other similar pavement obstructions requiring either mesh reinforced or heavily reinforced placements.

Portland Cement Concrete, Mesh or Heavily Reinforced, All Classes. The work will be measured for payment as the number of cubic yards of concrete satisfactorily placed, measured to the nearest 0.1 yard<sup>3</sup>, based on the Engineer-approved repair area marked on the pavement prior to repair and the thickness of concrete placed. No deductions will be made for drainage and utility structures or other similar pavement obstructions being isolated from the surrounding pavement.

Transverse Joints. The work will be measured for payment as the number of feet of transverse joints satisfactorily constructed within the repair boundary, measured to the nearest 0.1 foot. Separate

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measurement will be made for transverse joints that define the repair boundary and drilling and anchoring dowels into those joints.

Constructing Longitudinal Joints. The work will be measured for payment as the number of feet of longitudinal joints satisfactorily constructed within the repair boundary, measured to the nearest 0.1 foot. Separate measurement will be made for longitudinal joints that define the repair boundary and drilling and anchoring longitudinal joint ties in those joints.

**BASIS OF PAYMENT.**

Portland Cement Treated Permeable Base. Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Portland Cement Treated Permeable Base. No additional payment will be made for extra work required to repair damage to the adjacent permeable base or pavement that occurred during any operation. Additional payment will be made if the original repair area did not completely extend into sound concrete.

Portland Cement Concrete, Unreinforced, All Classes. Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Portland Cement Concrete, Unreinforced, All Classes. No additional payment will be made for Contractor-requested HES concrete mixes or extra work required to repair damage to the adjacent pavement that occurred during any operation. Additional payment will be made if the original repair area did not completely extend into sound concrete.

Portland Cement Concrete, Mesh or Heavily Reinforced, All Classes. Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Portland Cement Concrete, Mesh or Heavily Reinforced, All Classes. No additional payment will be made for Contractor-requested HES concrete mixes or extra work required to repair damage to the adjacent pavement that occurred during any operation. Additional payment will be made if the original repair area did not completely extend into sound concrete.

Transverse Joints. Include the cost of all labor, material, equipment, and labor necessary to satisfactorily perform the work in the unit price bid for Transverse Joints. Separate payment will be made for constructing transverse joints that define the repair boundary and drilling and anchoring dowels into those joints. Separate payment will be made for joint sealing or joint filling.

Longitudinal Joints. Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Longitudinal Joints. Separate payment will be made for constructing longitudinal joints that define the repair boundary and drilling and anchoring ties into those joints. Separate payment will be made for joint sealing or joint filling.

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***Payment Will Be Made Under:***

<b>Item No.</b>	<b>Item</b>	<b>Pay Unit</b>
502.35010018	Portland Cement Treated Permeable Base	Cubic Yard
502.36RC0018	Portland Cement Concrete (PCC) Placement for Full-Depth Repair	Cubic Yard
	<i><u>R - Reinforcement</u></i>	
	<i>0 - Unreinforced</i>	
	<i>1 - Isolated, Mesh Reinforced</i>	
	<i>2 - Isolated, Heavily Reinforced</i>	
	<i><u>C - Concrete Class</u></i>	
	<i>1 - Class C</i>	
	<i>2 - Class F</i>	
	<i>3 - HES</i>	
502.37010018	Transverse Joints	Foot
502.38010018	Longitudinal Joints	Foot

**ITEM 502.4MR00018 - PORTLAND CEMENT CONCRETE PAVEMENT PARTIAL-DEPTH REPAIRS**

**ITEM 502.46010018 - PORTLAND CEMENT CONCRETE PAVEMENT PARTIAL-DEPTH REPAIRS USING EPOXY RESIN SYSTEMS**

**DESCRIPTION.** Remove 2 – 4 inches of portland cement concrete (PCC) pavement, prepare the removal area, and repair it using Class D concrete, High-Early-Strength (HES) concrete, Concrete Repair Material, Rapid Hardening Concrete Repair Material, Rapid Hardening Polymer Concrete, or Epoxy Resin System as required by the contract documents.

**MATERIALS AND EQUIPMENT.**

Portland Cement Concrete, Class D.....	501
Concrete Repair Material.....	.701-04
Rapid Hardening Concrete Repair Material.....	.701-09
Coarse Aggregate.....	.703-02
Premoulded Resilient Joint Filler.....	.705-07
Portland Cement Mortar Bonding Grout .....	.705-22
Membrane Curing Compound ...	.711-05
Admixtures.....	.711-08
Water .....	.712-01
Epoxy Resin Systems.....	.721-01
Rapid Hardening Polymer Concrete .....	.721-20
Non-Chloride Accelerator Admixture .....	Approved

List

HES Concrete. Apply §502-2.02, High-Early-Strength (HES) Concrete, except:

- Design the HES mix to satisfy the opening to traffic time requirements of the contract and Table 1, High-Early-Strength Concrete Mix Requirements, rather than Table 502-1.
- Use coarse aggregate having a 1A gradation.
- Produce and place a 1.0 yard<sup>3</sup> (minimum) trial batch rather than a 4.0 yard<sup>3</sup> trial batch.

**TABLE 1 - HIGH-EARLY-STRENGTH CONCRETE MIX REQUIREMENTS**

Property	Minimum	Desired	Maximum
28 Day Compressive Strength (Trial Batch Only)	4,350 PSI	-	-
Opening Compressive Strength	3,000 PSI <sup>1</sup>	-	-
Plastic Air Content	5.0%	6.5%	8.0%
Slump	1½ inch	-	4 inch

<sup>1</sup> See Opening to Traffic below.

Determine the compressive strength of the trial batch concrete at the desired time as discussed below in Project Strength Determination. Mix design approval does not relieve the Contractor's responsibility of achieving the specified requirements during the contract.

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**ITEM 502.46010018 - PORTLAND CEMENT CONCRETE PAVEMENT PARTIAL-DEPTH REPAIRS USING EPOXY RESIN SYSTEMS**

HES concrete mix design and all details related to HES concrete production and discharge must be approved by the Regional Materials Engineer before placement.

Transit Mix HES Concrete. Accelerating admixtures may be batched into the concrete at the plant in accordance with §501-2.03F, Admixture Dispensing Systems, or added at the site depending on the amount of acceleration required and the haul time. When adding accelerating admixtures at the site, equip truck mixers with an air pressurized tank that:

- Contains the correct volume of admixture (for the volume of concrete in the truck) dispensed through the plant's Admixture Dispensing System.
- Discharges the required admixture quantity into the truck mixer drum in less than 1 minute.
- Has a clear plastic tank output hose that leads into the truck mixer drum.
- Has a properly working relief valve.

Twice daily, or more frequently if weather conditions change significantly as determined by the Engineer, determine the fine and coarse aggregate moisture contents. Compute the corresponding water added to the concrete in the truck from aggregate moisture. Subtract that quantity, as well as the water portion of the admixture in the tank and water added at the plant, from the design water for the truck. Submit these calculations to the NYSDOT plant inspector for approval. Upon approval, write the maximum volume of water to be added to the truck at the site on the delivery ticket. Upon arrival at the site, provide the delivery ticket to the Engineer.

Discharge the accelerating admixture into the truck mixer drum during or after any water additions at the site. Do not add more water than the maximum volume indicated on the delivery ticket. Add all of the accelerating admixture in 1 uninterrupted operation in 1 minute or less. Apply a maximum of 200 total mixing revolutions before discharge.

Truck Mix HES Concrete. Add the accelerating admixture and water at the site. Equip trucks with an air pressurized tank for accelerating admixtures as described above in Transit Mix HES Concrete and an in-line water flow meter that:

- Resets easily to "0".
- Is mounted to allow easy reading.
- Withstands water temperatures up to 195°F.
- Is equipped with air strainers capable of removing entrapped air within the system.
- Has a batching delivery tolerance of 1% by weight or volume.
- Has a manufacturers certified flow rate capacity of 70 gpm.
- Has a minimum actual flow rate of 50 gpm.

The Regional Materials Engineer will measure the actual flow rate and inspect the flow meter prior to use. Do not place any concrete without the Regional Materials Engineer's approval.

Twice daily, or more frequently if weather conditions change significantly as determined by the Engineer, determine the fine and coarse aggregate moisture contents. Compute the corresponding water added to the concrete in the truck from aggregate moisture. Subtract that quantity, as well as the water portion of the

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admixture in the tank, from the design water for the truck. Submit these calculations to the NYSDOT plant inspector for approval. Upon approval, write the exact volume of water to be added to the truck at the site on the delivery ticket. Upon arrival at the site, provide the delivery ticket to the Engineer.

Before adding water into the truck mixer, execute twenty dry revolutions at 12 to 18 rpm and reset the flow meter to 0. Add water in 1 uninterrupted operation. No water is to be removed from the truck mixer for any purpose while water is being added to the drum. After the required water designated on the delivery ticket has been added to the concrete in the truck, add all the accelerating admixture in 1 uninterrupted operation in 1 minute or less. Apply a maximum of 200 mixing revolutions before discharge.

Concrete Repair Material or Rapid Hardening Concrete Repair Material. Use only cementitious repair materials appearing on the Approved List. Provide the Engineer the Manufacturer's written instructions for mixing, bonding, placing, and curing the material. Follow the Manufacturer's instructions. Do not exceed the prescribed water amount. Extend concrete repair materials with coarse aggregate having a 1A gradation. Use a maximum aggregate extension rate of 60% of the dry, pre-packaged weight of repair material.

Rapid Hardening Polymer Concrete. Use rapid hardening polymer concrete appearing on the Approved List. Provide the Engineer the Manufacturer's written instructions for mixing, bonding, placing, and curing the material. Follow the Manufacturer's instructions, including all aspects of the Manufacturer's Safety Data Sheets when handling rapid hardening polymer concrete and their primers.

Extend rapid hardening polymer concrete with coarse aggregate having a 1A gradation. Use a maximum aggregate extension rate of 75% of the dry component weight of the repair material. Extension aggregates must contain no moisture at the time of mixing.

Epoxy Resin System. Use an epoxy resin system from a stock lot accepted by the Materials Bureau. Provide the Engineer the Manufacturer's written instructions for aggregate extension rates and type, substrate preparation, mixing, bonding, placing, and curing the material. Follow the Manufacturer's instructions, including all aspects of the Manufacturer's Safety Data Sheets when handling epoxy resin system. Extension aggregates must contain no moisture at the time of mixing.

Coring Equipment. Use trailer or truck mounted core rigs with diamond impregnated bits capable of coring 4 inches into the pavement. Use a core rig shaft capable of moving in multiple directions to readily position the bit over the removal area. Use a bit of sufficient diameter to remove the entire repair area to sound concrete. Maintain equipment and supplies to ensure uninterrupted operation. Supply a template equal in diameter to the bit outer diameter to mark removal areas prior to coring. Supply a steel sleeve having an outer diameter equal to the core bit outer diameter that is inserted into the core to protect the surrounding pavement during Concrete Removal described below.

Saw Cutting Equipment. Use diamond blade saws capable of making straight, 4 inch deep, saw cuts. Use saws equipped with cutting guides, blade guards, water cooling systems, dust control, and cut depth control. Maintain equipment and supplies to ensure uninterrupted operation.

Chipping Hammers. Use chipping hammers weighing no more than 30 pound (including bit and muffler) equipped with sharp spade bits. Provide the Engineer hammer specifications from the Manufacturer before sawing or coring. Use a maximum air pressure of 100 PSI (measured at the compressor) to power the



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hammer. Supply an air pressure gauge at the compressor that allows the Engineer to easily monitor air pressure. Maintain equipment and supplies to ensure uninterrupted operation. The Engineer may halt operations if concrete to remain in place is damaged by the hammers.

Milling Machines. Use a milling machine with a 12 inch (minimum) wide milling head and equipped with a mechanism that maintains the milling operation at a preset depth.

Vibrators. Use hand-held vibrators having a maximum diameter of 1 inch and capable of operating through a frequency range of 6000 - 9000 vibrations per minute.

**CONSTRUCTION DETAILS.** Meet with the Engineer 7 to 14 days before the planned start of removal to coordinate all aspects of removal, preparation and material placement including mixing, transport, and discharge, material requirements and testing, and personnel requirements. Perform all operations within the allowable work zone closure time frame included in the contract documents, if any.

Epoxy resin systems typically do not require coring or sawing the repair boundary or removing concrete. This material is used at very small, shallow repairs with sound underlying concrete. An epoxy resin system is the only repair material that can be feathered to meet concrete to remain in place.

Determine Repair Boundary - Coring Method. Determine the repair boundary by placing the template described above in Coring Equipment over the repair area and marking the boundary. Position the template such that the repair boundary extends completely into sound concrete. If a joint or crack crosses the repair boundary, position the template such that the joint or crack crosses through the middle 1/3 of the repair boundary. If the template can not be positioned such that the repair boundary extends completely into sound concrete, or a joint or crack can not be accommodated in the middle 1/3, determine the repair area in accordance with Determine Repair Boundaries - Saw Cut Method.

Determine Repair Boundary - Saw Cut Method. Sound the area surrounding the repair with a 2 – 3 pound hammer to identify delaminated areas and include them within the repair boundary. Extend repair areas 3 – 6 inches beyond the visible deterioration or delaminations, whichever is larger. Combine repair areas within 6 inches of each other into one repair. Keep repair areas as square as possible. Avoid irregular repair shapes. Mark the repair boundary outlines.

Core Repair Boundary. Do not core until the Engineer approves the repair boundary. Core 2 – 4 inches into the pavement. Core sufficiently deep to ensure sound concrete is reached and new concrete faces are exposed.

Saw Cut Repair Boundary. Do not saw cut until the Engineer approves the repair boundary. Diamond blade saw cut the repair boundaries 2 – 4 inches deep. Cut at right angles to the pavement joints and the pavement surface. Over cut intersecting saw cuts such that the entire repair area is cut to the same depth.

Concrete Removal - Coring Method. Use the steel sleeve described above in Coring Equipment and a chipping hammer to remove concrete within the core. Remove concrete such that the repair bottom is at a uniform depth, ± 1 inch, and sound concrete is exposed along all faces. Discontinue removal if:

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- Pavement joint hardware is encountered.
- The required repair depth exceeds 4 inches.
- The PCC surrounding or below the removal area is unsound.

In this instance the Engineer will determine the required repair, typically full-depth removal and replacement or partial-depth removal by the saw cutting method.

Concrete Removal - Saw Cuts. Use chipping hammers or a combination of chipping hammers and milling machines to remove concrete within the saw cuts. Remove concrete such that the repair bottom is at a uniform depth,  $\pm$  1 inch, and sound concrete is exposed along all faces. Do not operate milling machines within 25 mm of the saw cuts. Use chipping hammers in these locations to establish the proper repair depth. Discontinue removal if:

- Pavement joint hardware is encountered.
- The required repair depth exceeds 4 inches.
- The PCC surrounding or below the removal area is unsound.

In this instance the Engineer will determine the required repair, typically full-depth removal and replacement.

Clean the Repair Bottom and Vertical Faces. As close to repair material placement as possible, thoroughly abrasive blast all concrete surfaces that will be in contact with the repair material such that they are uniformly abraded and free of any dirt, laitance, oil, or other material that may prevent bond. Immediately before placement, air blast the repair to remove any remaining debris and moisture. The Engineer will check the:

- Air stream with a clean, white cloth to ensure no oil or contaminants are in the air blast.
- Repair surfaces for dust by wiping the repair faces with a dark cloth or glove.

Re-clean the repair if dust is found on the surfaces.

Some repair materials require a completely dry substrate to properly bond. Consult the Manufacturer's instructions and completely dry the substrate, if required, before placing the repair material.

Place Joint or Crack Insert. Fill joints or cracks that abut or cross the repair with a commercial caulk such that no repair material enters the joint or crack. Align premoulded resilient joint filler or commercial waxed corrugated cardboard with joints or cracks that abut or cross the repair area. Use an insert of the same thickness as the joint or crack width,  $\pm$  1/8 inch. Place inserts into the caulk before it sets such that no repair material enters the joint or crack. Leave the filler in place after the repair is complete.

Apply Bonding Agent. Use Portland Cement Mortar Bonding Grout if the repair material is Class D concrete or HES concrete. Mix the grout in small quantities to ensure freshly mixed grout is routinely placed. Mix the grout to a consistency that can be applied to the prepared surfaces without running or puddling. Evenly apply a thin coat of grout with a stiff bristle brush or broom to all surfaces receiving the repair material such that all cavities are coated. Slightly overlap the surrounding pavement surfaces. Do not apply bonding agent to the joint filler.

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Follow the Manufacturer's instructions regarding the type and application of bonding agent, including water, for all other repair materials. If water is used, blow excess from the repair such that no standing water remains.

Placement. Small construction mixers or paddle mixers may be used, provided the proper slump and air is obtained and all Manufacturer's instructions are followed. Ready mix trucks may be used if quantities are sufficient. Use wheelbarrows, buggies, or other transporting vehicles to bring the repair material to the prepared area. Use shovels for very small patches. Place Class D concrete or HES concrete before the bonding grout dries. Consolidate cementitious material with a hand-held vibrator.

Finishing. Finish repairs flush with the surrounding pavement. Keep hand finishing to a minimum. Hand trowel from the center of the patch outward toward the edges. Force repair material into the intersecting over cuts. Do not add any additional water to the repair surface.

Curing. Immediately after finishing, thoroughly coat Class D and HES concrete with a double coat of curing compound meeting §711-05, Membrane Curing Compound at a minimum rate of 80 FT<sup>2</sup>/Gal. Cure other materials in accordance with the Manufacturer's instructions.

Opening Class D or HES Concrete to Traffic. If no opening to traffic time frame is specified in the contract documents, open Class D concrete to traffic 5 days after placement. If an opening to traffic time frame is specified in the contract documents, open Class D or HES concrete to traffic after it has achieved a compressive strength of 3,000 PSI as discussed below in Project Strength Determination. The 5 day opening to traffic time frame may also be reduced if cylinders cast and tested as discussed below in Project Strength Determination indicate a compressive strength of 3,000 PSI has been achieved and the joints and cracks are sealed or filled in accordance with the contract documents.

Project Strength Determination. Provide an ACI Certified Concrete Field Testing Technician, Grade I, or higher, to cast all cylinders. Unless otherwise noted in the contract documents, use an agency accredited by the AASHTO Accreditation Program (AAP) in the field of construction materials testing of portland cement concrete to perform compressive strength testing. Cast and test in the presence of the Engineer, or the Engineer's representative. Provide acceptable proof of ACI Certification and AASHTO Accreditation to the Engineer before placing any concrete. The Engineer, or the Engineer's representative, will complete the Concrete Cylinder Report as cylinders are cast and tested.

Cast a minimum of 3 cylinder pairs (6 total) from each scheduled placement operation in accordance with Materials Method 9.2, Field Inspection of Portland Cement Concrete. Cast each pair from different delivery trucks with 1 of the 3 pairs cast from the last truck of the operation. Develop an Engineer-approved marking system that allows a cylinder to be readily associated with the corresponding placement location and placement time. Mark the cylinders and place them adjacent to the pavement under similar curing conditions.

Determine the concrete compressive strength in accordance with ASTM C39, Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens. Test all cylinder pairs at the same time relative to when they were cast. The testing time must be within the time frame needed to open the last concrete placed in the operation to traffic. The placement may be opened to traffic if all the following apply:

- Average compressive strength of all cylinder pairs exceed 2,500 PSI.

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- Average compressive strength of each cylinder pair exceeds 2,000 PSI.
- Appropriate time frame has elapsed for the entire area to be opened.

If these conditions are not met, test 3 additional cylinder pairs at a later time, provided the appropriate number of additional cylinders were cast and the placement has not been opened to traffic. If the above conditions are not met after additional testing, or, if the required number of additional cylinders were not cast, open the placement to traffic after 5 days, or when directed by the Engineer, provided this time frame is not in conflict with the work zone closure time restrictions stipulated in the contract documents. If the placement is opened to traffic (in accordance with the work zone closure time restrictions stipulated in the contract documents) before it has achieved the required strength, the placement will be considered Damaged or Defective Concrete and will be replaced at no additional cost to the State.

Contract testing for 28 day compressive strength is not required. If subsequent trial batches are required, the Engineer may waive the 28 day compressive strength testing.

Opening Other Materials to Traffic. Open other repair materials as follows:

Material	Time to Opening
Concrete Repair Material (701-04)	24 hours after placement
Rapid Hardening Concrete Repair Material (701-09)	3 hours after placement
Rapid Hardening Polymer Concrete (721-20)	3 hours after placement
Epoxy Resin System (721-01)	See Manufacturer's Instructions

**METHOD OF MEASUREMENT.** The work will be measured for placement as the number of square feet of partial-depth repairs satisfactorily placed, measured to the nearest 0.1 feet<sup>2</sup>, based on the Engineer-approved repair areas marked on the pavement prior to repair.

**BASIS OF PAYMENT.** Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Portland Cement Concrete Pavement Partial-Depth Repairs. 50% of the unit price bid will be paid if the Engineer changes the required repair after removal to a full-depth repair. No additional payment will be made for extra work required to repair damage to the adjacent pavement that occurred during any operation.

*Payment will be made under:*

Item No.	Item	Pay Unit
502.4MR00018	Portland Cement Concrete Pavement Partial-Depth Repairs	Square Feet

M - Material

1 - Class D Concrete

2 - HES Concrete

R - Repair Method

1 - Coring Method

2 - Saw Cutting Method

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- 3 - Concrete Repair Material*
- 4 - Rapid Hardening Concrete Repair Material*
- 5 - Rapid Hardening Polymer Concrete*

502.46010018	Portland Cement Concrete Pavement Partial-Depth Repairs Using Epoxy Resin Systems	Square Feet
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**ITEM 502.90010018 - CLEAN AND FILL CRACKS AND JOINTS IN PORTLAND CEMENT CONCRETE (PCC) PAVEMENT, ASTM D 6690 TYPE IV**

**DESCRIPTION.** Clean and fill the following cracks and joints that are 1/4 - 1 inch wide at the locations indicated in the contract documents:

- New transverse contraction joints within full depth repairs.
- Existing transverse and longitudinal joints outside new full depth repairs.
- Existing cracks.

Do not clean and fill:

- Transverse and longitudinal joints that define new full depth repair boundaries.
- New longitudinal joints within full depth repairs.

**MATERIALS.**

Highway Joint Sealants (ASTM D 6690 Type IV)..... 705-02  
Backer Rods..... ASTM D5249 (Type 1)

In addition to meeting the requirement of ASTM D5249 (Type 1), backer rods must have a diameter at least 25% wider than the location of the crack it is placed into.

The Department may perform supplementary sampling and testing of the sealant. Deliver sealant in the Manufacturer’s original sealed container legibly marked with the:

- Manufacturer’s name.
- Trade name of the sealant.
- Manufacturer’s batch or lot number.
- ASTM D 6690, Type IV.
- Minimum application temperature.
- Maximum (or Safe) heating temperature.

**CONSTRUCTION DETAILS.** If diamond grinding is included in the contract documents, prepare the joints and cracks, diamond grind the pavement, then clean and fill the joints and cracks.

Prepare New Transverse Contraction Joints Within Full Depth Repairs. Widen the joint to 1/4 – 3/8 inch for a depth of 1 inch if the first stage saw cut is less than ¼ inch wide. Use diamond blade saws equipped with cutting guides, blade guards, water cooling systems, dust controls, and cut depth control. Immediately wash the slurry from the pavement such that it does not re-enter the joint. Do not place backer rod in these joints.

Prepare Existing Transverse and Longitudinal Joints. Use a 1/8 – 1/4 inch wide, 1 5/8 inches deep saw cut to dislodge debris and existing sealant or filler from the joint without damaging the joint faces. Follow the saw cut with a compressed air blast to remove the dislodged debris to the bottom of the existing joint sealant reservoir or to a depth of 3 inches if there is no existing reservoir. Install a trap or other device on the compressed air equipment to prevent oil from contaminating the joint surfaces. Supplement the air blast with mechanical removal, such as a screwdriver, if it is not sufficient to remove the debris. Do not damage the joint faces. Immediately wash or sweep the dislodged debris from the pavement such that it does not re-enter the joint. Do not place backer rod in these joints.

Prepare Existing Cracks. Remove all debris from existing cracks as deep as possible using a compressed air blast supplemented with mechanical removal. Install a trap or other device on the compressed air

**ITEM 502.90010018 - CLEAN AND FILL CRACKS AND JOINTS IN PORTLAND CEMENT  
CONCRETE (PCC) PAVEMENT, ASTM D 6690 TYPE IV**

equipment to prevent oil from contaminating the crack surfaces. Immediately wash or sweep the dislodged debris from the pavement such that it does not re-enter the joint. Backer rod may be placed after cleaning provided it is at least 25 % wider than the crack everywhere along the crack and is placed 2 inches beneath the pavement surface.

Cleaning. Clean the joints and cracks by abrasive blasting before filling. Do not allow any traffic on the pavement between cleaning and filling. Reclean if it rains between cleaning and filling.

Sealant Melting. Provide the Engineer a copy of the sealant Manufacturer's recommendations for heating and application at least 24 business hours before filling. Follow those recommendations for heating and application. Unless stated otherwise, the recommended pouring temperature is 10°F below the Manufacturer's designated safe heating temperature, with an allowable variation of ± 10°F. Heat the sealant in a melter constructed either:

- As a double boiler with the space between inner and outer shells filled with a heat-transfer medium.
- With internal tubes or coils carrying the sealant through a heated oil bath and into a heated double wall hopper.

Do not use direct heating. Use a melter capable of maintaining the pouring temperature that is equipped with:

- Positive temperature controls.
- Mechanical agitation or a re-circulation pump capable of providing homogeneous sealant.
- Separate thermometers indicating the temperatures of the heat transfer medium and the sealant in the hopper. Do not place any sealant if the thermometers are defective or missing.

Prior to any sealing, measure the sealant temperature at discharge from the applicator wand. The temperature must be equal to or above the Manufacturer's recommended minimum pouring temperature and equal to or below the Manufacturer's recommended safe heating temperature. Discharge sealant into a vessel and measure the sealant temperature in the presence of the Engineer or the Engineer's representative. Provide 2 thermometers each having an 18 inches stem. Alternate methods to measure the sealant discharge temperature are subject to the Engineer's approval.

Use a discharge hose equipped with a thermostatically controlled heating apparatus or sufficiently insulated to maintain the proper sealant pouring temperature.

Do not use sealant heated beyond the safe heating temperature. Sealant may be reheated or heated in excess of six hours if allowed by the Manufacturer's heating and application recommendations. In these cases, recharge the melter with fresh sealant amounting to at least 20 % of the sealant volume remaining in the melter.

Filling. Fill within 8 hours of cleaning. Fill the joint or crack to within ¼ - ⅜ inch of the pavement surface. Fill when the:

- Air and surface temperatures are 40°F or warmer.
- Air temperature is above the dew point.
- Pavement surface and vertical joint\crack surfaces are dry.

Open to traffic after the sealant has cured to prevent tracking. A water mist may be used to accelerate curing. Do not blot with fine aggregate.

**ITEM 502.90010018 - CLEAN AND FILL CRACKS AND JOINTS IN PORTLAND CEMENT  
CONCRETE (PCC) PAVEMENT, ASTM D 6690 TYPE IV**

**METHOD OF MEASUREMENT.** The work will be measured for payment as the number of feet of joints/cracks satisfactorily filled.

**BASIS OF PAYMENT.** Include the cost of all labor, material, and equipment necessary to satisfactorily perform the work in the unit price bid for Clean and Fill Cracks and Joints in Portland Cement Concrete (PCC) Pavement, ASTM D 6690, Type IV.



**ITEM 520.05000010 - SAW CUTTING PORTLAND CEMENT CONCRETE AND COMPOSITE PAVEMENTS**

DESCRIPTION. This work shall consist of saw cutting existing reinforced or unreinforced portland cement concrete, including portland cement concrete pavement and sidewalk, and composite pavement (asphalt concrete on reinforced or unreinforced portland cement concrete), at the locations indicated on the plans or where directed by the Engineer.

MATERIALS. All equipment proposed for this work shall be subject to approval by the Engineer prior to actual use. Rotary rock saws shall not be used for cuts under this item.

CONSTRUCTION DETAILS. Saw cutting shall be along a neat line as indicated on the plans or where directed by the Engineer. The cuts shall be neat and true with no shatter. Saw cuts shall be made to the depth (s) indicated on the plans and as stated below.

When removing composite pavement the Contractor shall saw cut the existing pavement for the full depth of the concrete pavement. The total saw cut depth will be more, depending on the thickness of the asphalt. At the Contractor's option, the asphalt concrete may first be saw cut and removed before making a second cut through the portland cement concrete.

Any damage to material not indicated for removal, caused by the Contractor's operations, shall be repaired by the Contractor. All repair shall be done in a manner satisfactory to the Engineer.

METHOD OF MEASUREMENT. This work will be measured by the number of linear feet of saw cutting done. No allowance will be made for saw cuts of different depths.

Saw cutting which is done for the Contractor's convenience will not be measured for payment under this item.

BASIS OF PAYMENT. The unit price bid per linear foot of saw cutting shall include the cost of all labor, materials, and equipment necessary to complete the work.

Only one payment will be made for saw cutting when removing composite pavement regardless of the method chosen. The cost of saw cutting the asphalt concrete in the composite pavement is included in this item. No payment will be made for this saw cutting under the item for saw cutting asphalt concrete.

Any repairs made necessary by the Contractor's operations shall be done to the satisfaction of the Engineer at no additional cost to the State

**ITEM 520.09000010 - SAW CUTTING ASPHALT CONCRETE**

**DESCRIPTION.** This work shall consist of saw cutting existing asphalt concrete pavement or sidewalk at the locations indicated on the plans or where directed by the Engineer.

**MATERIALS.** All equipment proposed for this work shall be approved by the Engineer prior to actual use.

**CONSTRUCTION DETAILS.** Saw cutting shall be along a neat line as indicated on the plans or where directed by the Engineer. Saw cuts shall be made to the depth(s) indicated on the plans.

Any damage to material not indicated for removal, caused by the Contractor's operations shall be repaired by the Contractor. All repair shall be done in a manner satisfactory to the Engineer.

**METHOD OF MEASUREMENT.** This work will be measured by the number of linear feet of saw cutting done. No allowances will be made for saw cuts of different depths.

No saw cutting will be measured for payment under this item which the Contractor may choose to do for his own convenience.

**BASIS OF PAYMENT.** The unit price bid per linear foot of saw cutting shall include the cost of all labor, materials, and equipment necessary to complete the work.

Any repairs made necessary by the Contractor's operations shall be done to the satisfaction of the Engineer at no additional cost to the State.

**ITEM 604.07200110 - SETTING NEW DRAINAGE FRAMES ON EXISTING DRAINAGE STRUCTURES**

**DESCRIPTION**

This work shall consist of setting new drainage frames, complete with grates or covers, to grade on existing drainage structures and shall include removing, storing, and/or disposing of the existing frames, grates, covers, and appurtenances.

This item shall also include the setting of new drainage frames on existing drainage structures modified under the item, "Rebuilding Top of Existing Drainage Structures."

**MATERIALS**

The new drainage frames, grates, and covers will be furnished under separate items.

Materials shall meet the requirements of the following subsections of Section 700:

Concrete Repair Material	701-04
Concrete Grouting Material	701-05
Precast Concrete Pavers	704-13

Concrete shall be Class A meeting the requirements of Section 501.

**CONSTRUCTION DETAILS.**

The existing frames, grates, covers, and appurtenances shall be removed and, as indicated in the plans or directed by the Engineer, stored for pick up by others, used elsewhere on the contract, or disposed of off the work site.

The existing masonry adjustment collar, or a portion of it, shall be removed where necessary for setting of the new frame. The new frames shall be set to the line and grade as indicated in the plans or as directed by the Engineer, using precast concrete pavers and concrete grouting material and/or Class A concrete. The frames shall be set in a concrete grouting bed on the existing structure.

Any asphalt pavement and shoulder courses, subcourses, curbs, sidewalks, lawns and other top surfaces removed or damaged during the work of removing the existing frames and setting the new frames, shall be replaced in kind, unless otherwise directed by the Engineer. This shall include all sawcutting necessary for this removal.

Existing concrete/composite pavement shall be removed and restored as per the details given in the plans.

**METHOD OF MEASUREMENT**

**ITEM 604.07200110 - SETTING NEW DRAINAGE FRAMES ON EXISTING DRAINAGE STRUCTURES**

This work will be measured by the number of new drainage frames complete with grates or covers, set to grade on existing drainage structures or on existing drainage structures modified under the item, "Rebuilding Top of Existing Drainage Structures."

**BASIS OF PAYMENT**

The unit price bid for setting each drainage frame shall include the cost of all labor, materials, and equipment necessary to complete the work including any necessary sawcutting, removal and replacement of pavement and shoulder courses, subcourses, curbs, sidewalks, lawns and other top surfaces, unless otherwise indicated in the plans or proposal. Removal and restoration of concrete/composite pavement will be paid for separately.

New drainage frames, grates, and covers will be paid for under the appropriate items. Any frames, grates, covers or appurtenances broken thru carelessness on the part of the Contractor shall be replaced at the Contractor's expense.

## **ITEM 608.0105NN09 –CURB RAMP**

### **DESCRIPTION**

The work shall consist of constructing curb ramps, turning spaces, and associated curbing in accordance with the applicable Standard Sheets and Specifications, and in accordance with the Contract Documents.

The fifth and sixth number to the right of the decimal place (NN), in the item number, is a serialized number to match the different types of curb ramp configurations depicted in the US Customary Standard Sheets 608-01.

The work shall include demolition, saw cutting, disposal, fill, compaction, construction of the new curb ramps, turning spaces and associated curbing. Also included are detectable warning units (supplied and installed where required), repairs to affected asphalt and concrete (as necessary), topsoil, establishing turf (on disturbed areas), and finish work. All material and labor required to perform these tasks is included. Any required adjustments to utilities shall be performed under the specifications for that work.

### **MATERIAL**

Materials required for this work shall comply with, but are not limited to, the following Sections: 402-2, 502-2, 503-2, 608-2, 609-2, and 610-2.

### **CONSTRUCTION DETAILS**

The work shall be in conformance with the US Customary Standard Sheets 608-01 and 608-03. The work performed shall comply with, but is not limited to, the following Sections of the Standard Specifications: 401-3, 402-3, 502-3, 503-3, 608-3, 609-3, and 610-3.

Any existing utility facilities not indicated to be removed that are damaged by the Contractor's operations performing this work, shall be repaired by the Contractor, to the satisfaction of the Engineer, at no additional cost.

### **Survey Requirements**

The contractor shall be responsible for field verifying all elevations, slopes, and dimensions to ensure that the final layout of sidewalks and curb ramps meet ADA requirements prior to pouring concrete or placing asphalt or pavers. A Contract Control Plan is not necessary for work limited to sidewalks and curb ramps.

### **METHOD OF MEASUREMENT**

Payment will be made at the unit price bid for each type of curb ramp (as shown in the US Customary Standard Sheets 608-01), satisfactorily installed, in accordance with the Contract Documents.

### **BASIS OF PAYMENT**

The unit price bid shall include the cost of furnishing all labor, material, and equipment necessary to satisfactorily complete the work, to the satisfaction of the Engineer. Excavation and disposal under curb ramps and subbase course under curb ramps will be paid for separately. Sidewalk

**ITEM 608.0105NN09 –CURB RAMP**

beyond the upper grade break or turning space, as shown in the US Customary Standard Sheets 608-01, will be paid for separately. Any required Survey shall be paid for separately under the lump sum price bid for survey operations. Any incidental asphalt and concrete materials shall be included in work and not paid separately.

*Payment will be made under:*

<b><u>Item Number</u></b>	<b><u>Description</u></b>	<b><u>Pay unit</u></b>
608.01050009	Curb Ramp as shown in project details	Each
608.01050109	Curb Ramp Configuration Type 1	Each
608.01050209	Curb Ramp Configuration Type 2	Each
608.01050309	Curb Ramp Configuration Type 3	Each
608.01050409	Curb Ramp Configuration Type 4	Each
608.01050509	Curb Ramp Configuration Type 5	Each
608.01050609	Curb Ramp Configuration Type 6	Each
608.01050709	Curb Ramp Configuration Type 7	Each
608.01050809	Curb Ramp Configuration Type 8	Each
608.01050909	Curb Ramp Configuration Type 9	Each
608.01051009	Curb Ramp Configuration Type 10	Each
608.01051109	Curb Ramp Configuration Type 11	Each
608.01051209	Curb Ramp Configuration Type 12	Each
608.01051309	Curb Ramp Configuration Type 13	Each
608.01051409	Curb Ramp Configuration Type 14	Each

**ITEM 608.02010015 - Unclassified Excavation and Disposal for Sidewalks, Curb Ramps and Curbs**  
**ITEM 608.02020015 - Optional Type Subbase Course for Sidewalks, Curb Ramps and Curbs**

All the provisions of *Unclassified Excavation and Disposal* under Section 203 shall apply.

All the provisions of *Subbase Course, Optional Type* under Section 304 shall apply.

*Payment shall be made under:*

<b><u>ITEM NO.</u></b>	<b><u>ITEM DESCRIPTION</u></b>	<b><u>PAY UNIT</u></b>
608.02010015	Unclassified Excavation and Disposal for Sidewalks, Curb Ramps and Curbs	Cubic Yards
608.02020015	Optional Type Subbase Course for Sidewalks, Curb Ramps and Curbs	Cubic Yards

**ITEM 655.05020010 – FRAMES AND COVERS FOR SANITARY SEWER  
MANHOLES**

**DESCRIPTION:**

This work shall consist of furnishing and installing frames, covers and appurtenances for sanitary sewer manholes in accordance with these specifications and details shown on the contract plans.

**MATERIALS:**

Materials shall conform to the following:

Cast iron for manhole frames and covers, and all special cast iron fixture entering into the construction of the work shall be made of tough, close-grained, gray iron without the admixture of any cinder iron or metal of inferior quality. Iron shall conform to ASTM Designation A48, Class 30B.

Manhole frames and covers shall be coated with coal tar epoxy of approved quality applied by the hot-dip process.

The acceptance of the frames and covers for sanitary sewer manholes will be based on the manufacturer's certification of compliance.

All manhole frames, covers and appurtenances shall be similar in detail to those existing in the adjacent area, and all elements shall be interchangeable.

The Contractor shall submit to the Engineer, with such promptness as to cause no delay in the work, or in the work of any other contractor, seven (7) copies of all shop drawings and no work shall be fabricated until the Engineer's approval has been given. All shop drawings, cuts, catalogs or other data requiring approval must be submitted to the Engineer by the Contractor and must bear his stamp of approval evidencing that the data have been checked. Drawings, cuts, catalogs or other data submitted without this stamp of approval will not be considered by the Engineer and will be returned to the Contractor. Likewise, all questions concerning the plans and specifications which require clarification or interpretation shall be submitted in writing to the Engineer through the Contractors.

The Contractor shall make any corrections in the drawings required by the Engineer and shall file with the Engineer (7) corrected copies. Approval by the Engineer of such drawings shall not relieve the Contractor from responsibility for errors of any sort in shop drawings or deviations from plans and specifications unless the Contractor, at the time of submission of said drawings, has given notice to the Engineer of any such deviations.

**CONSTRUCTION DETAILS:**

Construction details shall conform with the details shown on the plan and shall conform to the requirements of Subsection 655-3 in addition to the following:

3/10/09ER 12/22/08E 5/28/99 M



**ITEM 655.05020010 – FRAMES AND COVERS FOR SANITARY SEWER  
MANHOLES**

All manholes will be provided with a Type “F” Manhole Frame and Cover (Adjustable Frame). The frame cover, without the use of any filler rings, shall be set to a top frame elevation 1-9/16 inch below finished grade. At the time of final paving, the frame and cover shall be raised to the correct grade by insertion of one 1 inch and one 19/32 inch filler rings. In the event the Engineer, at any time during the Contract Period, directs the removal of either or both filler rings, the Contractor shall remove them and deliver the same to the Engineer.

**METHOD OF MEASUREMENT:**

The quantity to be measured under this work will be the number of frames, covers and appurtenance materials furnished and placed in accordance with the plans and specifications. The measurement shall be made for the frame containing the cover and appurtenance.

**BASIS OF PAYMENT:**

The unit prices bid per frame and cover shall include the cost of furnishing all labor, materials and equipment necessary to satisfactorily complete the work, including the cost of any field repair work to render the frame and cover non-rocking.

**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE PAVEMENT MARKERS**

**DESCRIPTION**

Under this work, the Contractor shall furnish and install new raised reflectORIZED snowplowable pavement markers and replacement retroreflectors in existing snowplowable pavement marker castings, at the locations and in accordance with the patterns indicated in the plans or as directed by the Engineer.

A raised reflectORIZED snowplowable pavement marker shall consist of a one-way or a two-way plastic prismatic retroreflector that is mounted in a durable iron casting. The raised reflectORIZED snowplowable pavement marker shall be designed to provide nighttime visibility in wet weather conditions and to resist damage from snowplowing operations.

Replacement retroreflectors for existing raised reflectORIZED snowplowable pavement markers shall meet the requirements of these specifications and shall be designed for use with the iron castings in which they will be installed.

**MATERIALS**

1. **Raised ReflectORIZED Snowplowable Pavement Marker.** Raised reflectORIZED snowplowable pavement markers shall be furnished by the manufacturer as complete units which shall consist of a one-way or two-way retroreflector that is firmly adhered to a snowplow resistant iron casting. The iron casting shall be designed to protect the retroreflector from damage by snowplowing operations. The raised reflectORIZED snowplowable pavement marker shall be designed so that the lower portion of the iron casting is installed below the pavement surface and adhered with an epoxy resin adhesive.

Materials for raised reflectORIZED snowplowable pavement markers and for replacement retroreflectors shall meet the following requirements.

- a. **Retroreflector.** Retroreflectors shall be a prismatic type, molded of acrylic plastic, polycarbonate, or other suitable material designed to provide strength, abrasion resistance, impact resistance, resilience, and adhesion. The retroreflector shall be a transparent, ultraviolet stabilized grade material that provides resistance to color change over long periods of outdoor exposure.

The retroreflector shall contain one or two prismatic reflective face(s) to reflect incident light from one or two directions. The surface of the reflective face(s) shall be protected by a permanently bonded glass face or other transparent, abrasion-resistant material.

The minimum required reflective surface area of each reflective face shall be 1.43 in<sup>2</sup>.

**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE PAVEMENT**

**MARKERS**

The initial minimum coefficient of luminous intensity ( $R_i$ ) of each retroreflector shall be as shown in Table 1. Measurements shall be conducted in accordance with ASTM D 4383 or the following test procedure:

The retroreflector to be tested shall be located with the center of the reflective face at a distance of 5 ft from a uniformly bright light source having an effective diameter of 0.20 inches. The return of light shall be measured using an annular ring photocell having a 0.37 in I.D. x 0.47 in O.D. The photocell shall be shielded to eliminate stray light. The distance from the light source center to the center of the photo active area shall be 0.21 inches. If a test distance of other than 5 ft is used, the source and receiver dimensions and the distance between the source and receiver shall be modified in the same proportion as the test distance.

**Table 1  
Coefficient Of Luminous Intensity ( $R_i$ )  
Minimum Values (cd/fc)**

Entrance Angle	Observation Angle	White	Yellow	Red
0°	0.2°	3.0	1.8	0.75
20°	0.2°	1.2	0.72	0.30

When tested in accordance with ASTM D4383, the coefficient of luminous intensity ( $R_i$ ) of the retroreflective face(s), after abrasion and when measured in accordance with this specification, shall not be less than the values in Table 1.

When tested in accordance with ASTM D4383 the lens impact strength of the prismatic retroreflector face(s) shall show no more than two radial cracks longer than ¼ in. There shall be no radial cracks extending to the edge of the abrasion resistant area. There shall be no delamination.

The finished retroreflector shall be laminated to an approximately 40 mils thick elastomeric pad which is designed to absorb impact and to permit attachment of the retroreflector to the raised reflectORIZED snowplowable pavement marker iron casting.

- b. **Iron Casting.** The iron casting shall be ductile iron hardened to Rockwell Hardness 51-55

**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE PAVEMENT**

**MARKERS**

HRC. The iron casting shall be designed so that the final installation height of the top of the iron casting is a maximum 1/3 inches above the pavement surface, and the leading edges of the iron casting are installed below the pavement surface. Iron castings with ramps shall have a maximum 4 1/2° ramp angle. The ramp angle shall be the angle formed by the pavement surface and a straight line drawn from the intersection of the ramp with the pavement surface to the top of the ramp.

- c. **Epoxy Resin Adhesive.** Adhesive for bonding the iron casting to the pavement surface shall be a two-component epoxy resin which meets the requirements of AASHTO M 237, Type IV, or ASTM D 4383. Containers of epoxy resin adhesive in storage shall be protected from moisture and direct sunlight, and maintained at a temperature above 40 °F.
- d. **Replacement Retroreflector Adhesive.** Adhesive for bonding the replacement retroreflector to the existing iron casting shall meet the requirements of ASTM D 3498, or the adhesive shall be as recommended by the manufacturer of the replacement retroreflector.

**2. Basis of Acceptance.**

- a. **Raised ReflectORIZED Snowplowable Pavement Markers.** Raised reflectORIZED snowplowable pavement markers shall be considered for acceptance at the project site based on the appearance of the product on the Department's Approved List. The retroreflector and iron casting shall be identified with the manufacturer's name and product name.

The manufacturer shall certify that the raised reflectORIZED snowplowable pavement marker meets the requirements of these specifications.

Raised reflectORIZED snowplowable pavement markers shall be approved by the Materials Bureau based on laboratory and field testing. Detailed requirements and procedures for the approval of raised reflectORIZED snowplowable pavement markers are available from the Materials Bureau.

- b. **Replacement Retroreflectors.** Replacement retroreflectors shall be considered for acceptance at the project site based on the appearance of the product on the Department's Approved List. Replacement retroreflectors shall be identified with the manufacturer's name and product name.

The manufacturer shall certify that the replacement retroreflector(s) meet the requirements of this specification.

Replacement retroreflectors shall be approved by the Materials Bureau based on laboratory and field testing. Detailed requirements and procedures for the approval of

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**MARKERS**

replacement retroreflectors are available from the Materials Bureau.

Adhesive for bonding replacement retroreflectors to existing iron castings shall be accepted based on the manufacturer's certification that the product meets the requirements of these specifications.

- c. **Epoxy Resin Adhesive.** Epoxy resin adhesives shall be considered for acceptance at the project site on the basis of the manufacturer's certification that the adhesive meets the requirements of AASHTO M 237, Type IV or ASTM D 4383. Containers of epoxy resin adhesive shall be labeled with the manufacturer's name, the product name, the date of manufacture, and the shelf life.

**CONSTRUCTION DETAILS**

- 1. **General.** Before work begins, the Contractor shall submit a schedule of operations for approval by the Engineer. In addition, the Contractor shall supply the Engineer with the manufacturer's written installation and usage instructions for all materials to be used on the project.

All raised reflectorized snowplowable pavement markers and replacement retroreflectors shall be installed and located as shown in the contract documents or as directed by the Engineer and in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

When raised reflectorized snowplowable pavement markers and replacement retroreflectors are installed under traffic, the Contractor shall provide all necessary traffic control devices including flaggers, signs, channelizing devices, mobile construction zone impact attenuators, shadow vehicles with flashing arrow boards, flashing arrow boards, etc. to maintain and protect traffic, to protect the work operation, and to protect raised reflectorized snowplowable pavement markers or retroreflectors until thoroughly serviceable. No additional payment will be made for this work.

The installation of raised reflectorized snowplowable pavement markers and replacement retroreflectors shall be performed in such a manner so as not to cause damage to the surrounding pavement. The Contractor shall be responsible for repairing damaged pavement surfaces that result from improper installation, or installation of raised reflectorized snowplowable pavement markers in unauthorized areas. Removal and repair work shall be done as directed by and to the satisfaction of the Engineer, at no cost to the State.

- 2. **Installation of Raised Reflectorized Snowplowable Pavement Markers.** All raised reflectorized snowplowable pavement markers shall be installed in accordance with the manufacturer's written instructions for installation, in accordance with these specifications, and as directed by the Engineer.

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**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE  
PAVEMENT MARKERS**

Raised reflectorized snowplowable pavement markers installed in broken line patterns shall be placed in the gaps between the existing broken lines and in the same longitudinal alignment as the existing broken lines.

Raised reflectorized snowplowable pavement markers installed in full or partial barrier line patterns shall be installed between the two existing full or partial barrier lines except that raised reflectorized snowplowable pavement markers shall not be installed across longitudinal or transverse pavement joints. If a longitudinal pavement joint exists between full or partial barrier lines, two raised reflectorized snowplowable pavement markers shall be placed opposite each other, located on the outside of and 2 inches away from each of the double yellow lines. A pavement joint shall be defined as either a sawed or formed joint in a concrete pavement that separates two pavement slabs or lanes, or as a construction (paving) joint or sawed and sealed joint in an asphalt pavement.

When possible, the edges of the raised reflectorized snowplowable pavement marker shall be located 4 to 6 inches away from pavement joints and cracks.

Raised reflectorized snowplowable pavement markers shall not be installed at locations that show visible evidence of pavement deterioration such as cracking and spalling. If the typical longitudinal spacing of the raised reflectorized snowplowable pavement marker falls at a location of pavement deterioration the raised reflectorized snowplowable pavement marker shall be relocated to another location as directed by the Engineer. In general, the distance that the raised reflectorized snowplowable pavement marker may be relocated away from the original location should not exceed  $\pm 10\%$  of the specified longitudinal spacing. If the raised reflectorized snowplowable pavement marker cannot be relocated within the  $\pm 10\%$  tolerance, the raised reflectorized snowplowable pavement marker should not be installed.

Raised reflectorized snowplowable pavement markers shall be installed by the following operation:

- a. **Pavement Cutting and Cleaning.** The pavement shall be cut to the dimensions and depth recommended by the manufacturer of the raised reflectorized snowplowable pavement marker. The Contractor shall conduct pavement cutting operations and pavement cleaning work in such a manner as to minimize airborne dust and similar debris so as to prevent a hazard to workers, motor vehicle operation, or nuisance to property. On new portland cement concrete pavements, pavement cutting operations shall not begin until a minimum of 30 days after placement of the concrete, unless otherwise allowed by the Engineer.

All debris resulting from the pavement cutting operation shall be collected by vacuuming the pavement cut and adjacent pavement surface. Collected debris shall be disposed of uncontaminated solid waste or construction and demolition debris. The Contractor shall ensure that all operations associated with the handling, transporting, and disposal of the construction and demolition debris are in compliance with the New York State Solid Waste Management Regulations 6 NYCRR, Part 360 as well as all applicable Federal,

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**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE  
PAVEMENT MARKERS**

State and local regulations.

- b. **Installation of Raised ReflectORIZED Snowplowable Pavement Marker.** No raised reflectORIZED snowplowable pavement markers shall be installed when the ambient or pavement temperatures are below 50°F.

At the time of installation, the cut pavement shall be clean, dry, and free of loose material. The minimum surface temperature of the iron casting shall be 50°F and surfaces of the iron casting shall be substantially free of scale, dirt, rust, oil, grease, or any other contaminant which may reduce the bond between the iron casting and the epoxy adhesive. Iron castings that require removal of contaminants shall be cleaned as directed by and to the satisfaction of the Engineer.

If necessary, to facilitate installation of the epoxy resin adhesive the two components (Part A and Part B) may be heated, by indirect heat, in accordance with the manufacturer's written recommendations. The minimum temperature of the epoxy resin adhesive shall be 50 °F.

The epoxy resin adhesive shall be proportioned and mixed in accordance with the epoxy resin adhesive manufacturer's written recommendations. The mixed epoxy resin adhesive shall be dispensed into the pavement cut in such quantity that the cavity is filled with epoxy resin adhesive to within approximately ½ inch of the pavement surface.

The raised reflectORIZED snowplowable pavement marker shall be immediately placed into the filled pavement cut. Extreme care shall be taken to ensure that the tabs located on the sides of the iron casting are in direct contact with the pavement surface, and the leading edges of the iron casting are below the pavement surface.

That portion of the iron casting installed in the pavement cavity shall be completely encased in the epoxy resin adhesive. Additional epoxy adhesive shall be added as necessary so that the adhesive is approximately flush with the pavement surface. Excess epoxy shall not be allowed to remain in front of the retroreflector or on the face of the retroreflector.

The installed raised reflectORIZED snowplowable pavement marker shall be protected from traffic until the epoxy resin adhesive has hardened to a condition that will not allow the iron casting to move.

3. **Installation of Replacement Retroreflectors for Existing Raised ReflectORIZED Snowplowable Pavement Markers.** No replacement retroreflectors shall be installed when the ambient temperature is less than 50 °F, when the surface temperature of the iron casting is less than 50 °F, when the iron casting is wet, or during periods of rain.

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Prior to installing replacement retroreflectors, the Contractor shall remove existing retroreflectors and clean the existing iron castings. Retroreflectors that are removed from existing iron castings shall be collected and disposed of in a manner approved by the Engineer. All visible adhesive residue, salt, dirt, rust, and other contaminants that are detrimental to the adhesion of the replacement retroreflector shall be removed from the existing iron casting by either abrasive blasting, hand and power wire brushing, or by other methods approved by the Engineer. Surfaces of the iron casting shall be clean and dry at the time of installation of the replacement retroreflector and adhesive.

If present, the release paper or protective liner shall be removed from the laminated elastomeric pad on the bottom of the new retroreflector. If recommended by the manufacturer of the replacement retroreflector, adhesive (approximate ½ inch diameter bead) shall be applied lengthwise to the center of the elastomeric pad or to the center of the iron casting surface that will receive the retroreflector. The replacement retroreflector shall be immediately installed into the iron casting and a minimum load of 100 lb shall be applied to the top of the retroreflector to seat and secure the replacement retroreflector.

Properly applied adhesive shall cover the entire contact area of the bottom of the retroreflector and a slight excess of adhesive will be evident around the edges of the retroreflector. The Contractor shall remove excess adhesive from the retroreflector face or excess build up of adhesive on the iron casting in front of the retroreflector face.

**METHOD OF MEASUREMENT**

Raised reflectorized snowplowable pavement markers will be measured as the number of complete raised reflectorized snowplowable pavement marker units satisfactorily furnished and installed.

Replacement retroreflectors will be measured as the number of retroreflector units satisfactorily furnished and installed.

**BASIS OF PAYMENT**

The accepted quantities of raised reflectorized snowplowable pavement markers and replacement retroreflectors will be paid for at the contract unit price, which shall include the cost of furnishing all labor, materials and equipment to satisfactorily complete the work. The cost for maintenance and protection of traffic, construction signs, mobile construction zone impact attenuators, shadow vehicles with flashing arrow boards, flashing arrow boards, etc. shall be included in the price bid under this item. The cost of collection and disposal of uncontaminated solid waste and existing retroreflectors shall be included in the price bid under this item.

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**ITEM 685.03XX0018 - RAISED REFLECTORIZED SNOWPLOWABLE  
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Payment will be made under:

<u>Item No.</u>	<u>Item</u>	<u>Pay Unit</u>
685.03100018	Raised Reflectorized Snowplowable Pavement Marker (One-way White)	Each
685.03110018	Raised Reflectorized Snowplowable Pavement Marker (One-way Yellow)	Each
685.03120018	Raised Reflectorized Snowplowable Pavement Marker (Two-way Yellow)	Each
685.03130018	Raised Reflectorized Snowplowable Pavement Marker (Two-way White/Red)	Each
685.03140018	Raised Reflectorized Snowplowable Pavement Marker (Two-way Yellow/Red)	Each
685.03150018	Replacement Retroreflector for Existing Raised Reflectorized Snowplowable Pavement Marker (One-way White)	Each
685.03160018	Replacement Retroreflector for Existing Raised Reflectorized Snowplowable Pavement Marker (One-way Yellow)	Each
685.03170018	Replacement Retroreflector for Existing Raised Reflectorized Snowplowable Pavement Marker (Two-way Yellow)	Each
685.03180018	Replacement Retroreflector for Existing Raised Reflectorized Snowplowable Pavement Marker (Two-way White/Red)	Each
685.03190018	Replacement Retroreflector for Existing Raised Reflectorized Snowplowable Pavement Marker (Two-way Yellow/Red)	Each

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**ITEM 685.0715XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 15 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

**ITEM 685.0720XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

**DESCRIPTION:**

Under this work the contractor shall furnish and apply epoxy reflectorized pavement markings in accordance with these specifications, the Contract Documents, the NYSMUTCD, or as ordered by the Engineer. Items for Special Markings include stop bars and crosswalks.

Yield line symbols are isosceles triangles with height equaling 1.5 times the base dimension:

A small yield line symbol shall have a base dimension of one foot.

A large yield line symbol shall have a base dimension of two feet.

Yield line symbols are to be installed with the Apex of the triangle oriented towards oncoming traffic.

The epoxy marking material shall be hot-applied by spray methods onto bituminous and portland cement concrete pavement surfaces at the thickness and width shown on the Contract Documents. Following a simultaneous application of Standard Glass Beads (Type 2) and Wet/Night Visibility Beads (Type 1), the cured epoxy marking shall be an adherent reflectorized stripe that will provide wet night retro-reflectivity.

**MATERIALS REQUIREMENTS:**

Epoxy Paint	727-03
Glass Beads for Pavement Markings	727-05

**Reflective Glass Spheres**

Retro-reflective beads shall be a double drop system of glass spheres consisting of Standard Beads (Type 2) and Wet/Night Visibility Beads (Type 1) as defined in §727-05 Glass Beads for Pavement Markings.

**EPOXY APPLICATING EQUIPMENT**

In general, a mobile applicator shall be a truck mounted, self-contained pavement marking machine, specifically designed to apply epoxy resin materials and reflective glass spheres in continuous line patterns. The applying equipment shall be maneuverable to the extent that straight lines can be followed and normal curves can be made in a true arc. In addition, the truck mounted unit shall be provided with accessories to allow for the marking of cross hatching and other special patterns as directed by the Engineer.

At any time throughout the duration of the project, the Contractor shall provide free access to his epoxy applying equipment for inspection by the Engineer or his authorized representative.

The Engineer may approve the use of a portable applicator in lieu of mobile truck mounted accessories for use in applying special markings only, provided such equipment can demonstrate satisfactory application of reflectorized epoxy markings in accordance with these specifications.

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(WET NIGHT VISIBILITY SPHERES)**

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(WET NIGHT VISIBILITY SPHERES)**

Mobile applying equipment shall be capable of installing up to 19 miles of epoxy reflectorized pavement markings in an eight hour day and shall include the following features:

1. Individual tanks for the storage of Part A and Part B of the epoxy resin.
2. Individual tanks for the storage of Standard (Type 2) and Wet/Night Visibility (Type 1) glass spheres. Each tank shall have a minimum capacity of 3000 lbs.
3. Heating equipment of sufficient capacity to maintain the individual epoxy resin components at the manufacturer's recommended temperature for spray application.
4. Individual dispensers for the simultaneous application of Standard (Type 2) and Wet/Night Visibility (Type 1) glass spheres. Each dispenser shall be capable of applying spheres at a minimum rate of 10 lbs/gal of epoxy resin composition.
5. Metering devices or pressure gauges on the proportioning pumps, positioned to be readily visible to the Engineer.
6. All necessary spray equipment, mixers, compressors, and other appurtenances for the placement of epoxy reflectorized pavement markings in a simultaneous sequence of operations as described in Construction Details, D. Application of Epoxy ReflectORIZED Pavement Markings.

**CONSTRUCTION DETAILS**

**A. General**

All pavement markings shall be placed as shown on the Contract Documents and in accordance with the New York State, Manual of Uniform Traffic Control Devices (MUTCD).

Before any pavement marking work is begun, a schedule of operations shall be submitted for the approval of the Engineer.

At least five (5) days prior to starting striping, the Contractor shall provide the Engineer with the epoxy manufacturer's written instructions for use. These instructions shall include, but not be limited to, material mixing ratios and application temperatures.

When pavement markings are applied under traffic, the Contractor shall provide all necessary flags, markers, signs, etc. in accordance with the MUTCD to maintain and protect traffic, and to protect marking operations and the markings until thoroughly set.

The application of pavement markings shall be done in the general direction of traffic. Striping against the direction of traffic flow shall not be allowed.

**ITEM 685.0715XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 15 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

**ITEM 685.0720XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

The Contractor shall be responsible for removing, to the satisfaction of the Engineer, all tracking marks, spilled epoxy, and epoxy markings applied in unauthorized areas.

When necessary the Contractor shall establish marking line points at 30 foot intervals throughout the length of the pavement or as directed by the Engineer.

**B. Atmospheric Conditions**

Epoxy pavement markings shall only be applied during conditions of dry weather and on substantially dry pavement surfaces. At the time of installation the pavement surface temperature shall be a minimum of 50°F and the ambient temperature shall be a minimum of 50°F and rising. The Engineer shall be the sole determiner as to when atmospheric conditions and pavement surface conditions are such to produce satisfactory results.

**C. Surface Preparation**

The Contractor shall clean the pavement and existing durable markings to the satisfaction of the Engineer.

Surface cleaning and preparation work shall be performed only in the area of the epoxy markings application.

At the time of application all pavement surfaces and existing durable markings shall be free of oil, dirt, dust, grease and similar foreign materials. The cost of cleaning these contaminants shall be included in the bid price of this item.

In addition, concrete curing compounds on new portland cement concrete surfaces and existing painted pavement markings on both concrete and bituminous pavement surfaces shall be cleaned and paid for in accordance with §635 Cleaning and Preparation of Pavement Surfaces for Pavement Markings.

**D. Application of Epoxy ReflectORIZED Pavement Markings**

Epoxy reflectORIZED pavement markings shall be placed at the width, thickness, and pattern designated in the Contract Documents.

Marking operations shall not begin until applicable surface preparation work is completed and approved by the Engineer, and the atmospheric conditions are acceptable to the Engineer.

Pavement markings shall be applied by the following simultaneous operation:

1. The pavement surface is air-blasted to remove dirt and residues.
2. The epoxy resin, mixed and heated in accordance with the manufacturer's

**ITEM 685.0715XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 15 MILS THICK  
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**ITEM 685.0720XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK  
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recommendations, is uniformly hot-sprayed onto the pavement surface at the minimum specified thickness.

3. Standard (Type 2) and Wet/Night Visibility (Type 1) reflective glass spheres are injected into or dropped onto the liquid epoxy marking. Standard beads (Type 2) shall be applied first immediately followed by the application of Wet/Night Visibility beads (Type 1). Each type shall be applied at a minimum rate of 10 lbs/gal of epoxy resin (minimum total application = 20 lbs/gal).

**E. Defective Epoxy Pavement Markings**

Epoxy reflectORIZED pavement markings, which after application and curing are determined by the Engineer to be defective and not in conformance with this specification, shall be repaired. Repair of defective markings shall be the responsibility of the Contractor and shall be performed to the satisfaction of the Engineer as follows:

1. Insufficient film thickness and line width; insufficient glass bead coverage or inadequate glass bead retention.

Repair Method. Prepare the surface of the defective epoxy marking by grinding or blast cleaning. No other cleaning methods will be allowed. Surface preparation shall be performed to the extent that a substantial amount of the reflective glass spheres are removed and a roughened epoxy marking surface remains.

Immediately after surface preparation remove loose particles and foreign debris by brooming or blasting with compressed air.

Repair shall be made by restriping over the cleaned surface in accordance with the requirements of this specification and at the full thickness indicated on the Contract Documents.

2. Uncured or discolored epoxy\*; insufficient bond (to pavement surface or existing durable marking).

Repair Method. The defective epoxy marking shall be completely removed and cleaned to the underlying pavement surface in accordance with the requirements of Section 635 - Cleaning and Preparation of Pavement Surfaces, at the Contractor's expense.

The extent of removal shall be the defective area plus any adjacent epoxy pavement marking material extending three feet in any direction.

After surface preparation work is complete, repair shall be made by reapplying epoxy over the cleaned pavement surface in accordance with the requirements of this specification.

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\*Uncured epoxy shall be defined as applied material that fails to cure (dry) in accordance with the requirements of §727-03 Epoxy Paint; or applied material that fails to cure (dry) within a reasonable time period under actual field conditions, as defined by the Engineer.

Discoloration shall be defined as localized areas or patches of brown, grayish or black colored epoxy marking material. These areas often occur in a cyclic pattern and often are not visible until several days or weeks after markings are applied.

Other defects not noted above, but determined by the Engineer to need repair, shall be repaired or replaced as directed by and to the satisfaction of the Engineer.

All work in conjunction with the repair or replacement of defective epoxy reflectorized pavement markings shall be performed by the Contractor at no additional cost to the State.

**METHOD OF MEASUREMENT**

Pavement striping (regular lines, cross hatching and special markings) will be measured in feet along the centerline of the pavement stripe and will be based on a 4 inch wide stripe. Measurement for striping with a width greater than the basic 4 inches, as shown on the plans or directed by the Engineer, will be made by the following method:

$$\frac{\text{Plan Width of Striping (inches) X Feet}}{4 \text{ inches}}$$

**BASIS OF PAYMENT**

The accepted quantities of markings will be paid for at the contract unit price, which shall include the cost of furnishing all labor, materials and equipment to satisfactorily complete the work. The cost for maintaining and protecting traffic during the marking operations shall be included in the price bid. The cost of removal of concrete curing compounds and existing pavement markings will be paid under separate items and are not included in this item.

No payment will be made for the repair or replacement of defective epoxy reflectorized pavement markings.

<b><u>PAY ITEM NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAY UNIT</u></b>
685.07150110	White Epoxy Reflectorized Pavement Stripes – 15 mils	Foot

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685.07150210	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Letters - 15 mils	Each
685.07150310	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Symbols – 15 mils	Each
685.07150410	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Cross Hatching -15 mils Thick	Foot
685.07150510	(Wet Night Visibility Spheres) White Epoxy ReflectORIZED Pavement Stripes (Special Markings) 15 mils Thick (Wet Night Visibility Spheres)	Foot
685.07150610	Yellow Epoxy ReflectORIZED Pavement Stripes – 15 mils (Wet Night Visibility Spheres)	Foot
685.07150710	Yellow Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 15 mils Thick (Wet Night Visibility Spheres)	Foot
685.07150810	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Small - 15 mils (Wet Night Visibility Spheres)	Each
685.07150910	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Large - 15 mils (Wet Night Visibility Spheres)	Each
685.07200110	White Epoxy ReflectORIZED Pavement Stripes – 20 mils (Wet Night Visibility Spheres)	Foot
685.07200210	White Epoxy ReflectORIZED Pavement Letters – 20 mils (Wet Night Visibility Spheres)	Each
685.07200310	White Epoxy ReflectORIZED Pavement Symbols – 20 mils (Wet Night Visibility Spheres)	Each
685.07200410	White Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 20 mils Thick (Wet Night Visibility Spheres)	Foot
685.07200510	White Epoxy ReflectORIZED Pavement Stripes (Special Markings) 20 mils Thick (Wet Night Visibility Spheres)	Foot

**ITEM 685.0715XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 15 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

**ITEM 685.0720XX10 - EPOXY REFLECTORIZED PAVEMENT MARKINGS 20 MILS THICK  
(WET NIGHT VISIBILITY SPHERES)**

685.07200610	Yellow Epoxy ReflectORIZED Pavement Stripes – 20 mils (Wet Night Visibility Spheres)	Foot
685.07200710	Yellow Epoxy ReflectORIZED Pavement Stripes (Cross Hatching) 20 mils Thick (Wet Night Visibility Spheres)	Foot
685.07200810	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Small - 20 mils (Wet Night Visibility Spheres)	Each
685.07200910	White Epoxy ReflectORIZED Pavement Yield Line Symbols - Large - 20 mils (Wet Night Visibility Spheres)	Each



# LPM

## CHAPTER 12

# CONSTRUCTION CONTRACT REQUIREMENTS

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**NOTE: This Chapter has associated appendices and forms at:**  
<https://www.dot.ny.gov/plafap>

**The web addresses for hyperlink words referenced throughout this Chapter (except LPM Chapter links) are on the last page under REFERENCE.**

**Appendices**

**Appendix**

- 12-1 CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-2 ADDITIONAL CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-3 CONSTRUCTION MANAGEMENT PLAN**
- 12-4 PUBLIC INTEREST FINDING, INSTRUCTIONS, SAMPLE LETTER**
- 12-5 TRANSMITTAL OF CONTRACT BID DOCUMENTS AND PLANS, SPECIFICATIONS, AND ESTIMATE LETTER**
- 12-6 CONTRACT BID DOCUMENTS – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) - CHECKLIST**
- 12-7 PROPOSAL COVER, TABLE OF CONTENTS, TITLE SHEET**
- 12-8 NYSDOT SHELF NOTES**
- 12-9 CERTIFICATION FOR PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)**
- 12-10 DBE COMMITMENT (Prior Appendix 14-9)**

## 12.1 INTRODUCTION

This Chapter describes the requirements that apply to construction contracts advertised, bid, and awarded by Sponsors. The requirements are from the United States Code of Federal Regulations (CFR), specifically Title 23, Highways, and Title 49, Transportation. Sponsors must adhere to the requirements of both CFR Titles 23 and 49 when using federal funds. [Chapter 3](#) of the Local Projects Manual (LPM) provides additional information on the Federal Highway Administration (FHWA) funded programs and eligibility.

## 12.2 PROJECT MANAGEMENT

### 12.2.1 Construction Management Plan (CMP)

As stated in [Chapter 2](#) of the LPM, NYSDOT requires all Sponsors to have a written Construction Management Plan (CMP) detailing how the construction contract will be administered. The plan describes how the Sponsor plans to provide adequate supervision and inspection, including materials inspection and acceptance, and independent quality assurance to ensure projects are completed in conformance with the approved plans and specifications.

The CMP is part of the overall Project Management Plan (PMP) (see [Chapter 2](#)). Title **23 CFR 635.105(c)(4)** requires a Sponsor to provide a full-time employee to be in responsible charge of the project even if using consultants to provide engineering and construction inspection services or project management. This full-time employee is referred to as the Project Manager (PM). The PM reports to the Responsible Local Official (RLO), who has ultimate oversight and responsibility for the project.

The PM and the RLO may be the same individual if the RLO has project management experience. However, since each Sponsor has different resources and each construction project is different, the minimum requirements to be included in each CMP are noted in Appendix 12-3.

If the CMP is not approved before letting, between contract letting and contract award, the Sponsor's PM, Engineer-in-Charge (EIC), Inspector(s), and the Regional Local Projects Liaison (RLPL) shall meet to modify the CMP to include information initially not available to the Sponsor.

The CMP should be updated to include a list of individuals involved, their qualifications, responsibilities, and supervision hierarchy. The CMP may be modified by agreement between the contractual parties as necessary due to personnel changes, changed conditions, scope changes, schedule changes, or other reasons. See Appendix 12-3 for the CMP template. NYSDOT must approve the CMP before contract award.

### 12.2.2 Combination of Two or More Projects for Bidding Purposes

Title **23 CFR 635.111** permits two or more federal-aid and state-aid financed projects to be tied (combined) for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. All proposals submitted for tied projects must contain separate engineering shares for each project. Typically, the combination of projects is predetermined at the beginning of the project, with inclusion in the Project Management Plan. Care should be taken in determining the combination of the projects so that one will not delay the progress of the other (e.g., environmental issues, right-of-way concerns, schedule, funding availability). The Sponsor will coordinate the combination of two or more projects with the RLPL.

### 12.2.3 Bundling of Projects

Projects can be bundled for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. Bundled projects must have an independent utility with an independent logical termini and do not rely on each other to be completed. This bundling is typically determined and combined as a single contract package at PS&E. In the event that a bundled project includes both a federal-aid funded project and a state-aid funded project, the entire bundled project will need to meet federal contract requirements, which include compliance with Buy America, DBE, and Federal Prevailing Wage Rates. NEPA re-evaluation prior to construction authorization will only be required on the federally funded projects included.

All proposals submitted must contain separate bid prices for each project. It will be vital to track the expenses to the separate engineering shares to ensure no federal funds are expended on any of the state-funded projects included. Reimbursement requests will need to be submitted clearly separating the items for each project/engineering share (including lump sum items.) If federal aid is expended on a state-funded project, then that project would need to be in compliance with all federal regulations, including NEPA.

### 12.3 CONTRACTOR'S BID PROPOSAL PACKAGE CONTENTS

Sponsors can begin preparing the Contractor's Bid Proposal Package as soon as they have received federal authorization for Detailed Design. This section addresses the major topics covered in the Contractor's Bid Proposal Package. Sponsors must ensure that they use the most recent version of Appendices 12-1 and 12-1A and that the package is organized sequentially. Appendix 12-7, Proposal Title Page, Table of Contents, and Project Title Sheet should be included. Appropriate Shelf Notes to be added can be obtained from the RLPL. See Appendix 12-8 for a list.

The contract plans (if applicable), specifications, and estimate (PS&E) are the outcome of the design stage. It is a summary of the final design information necessary for contract advertisement.

- **For contracts off the State Highway System or National Highway System (NHS)** - The Sponsor must document in writing to the RLPL that all requirements and appropriate appendices were included in the contract bid documents.
- **For contracts on the State Highway System or NHS** - Contract bid documents must be submitted to the RLPL for a completeness review and approval by the Regional Director (RD) and/or FHWA prior to contract advertisement.
- See Project Development Manual (PDM) Exhibit 4-2 and Exhibit 4-3 for approval requirements.

The Contract Bid Document Transmittal Letter (see Appendix 12-5) is used to transmit to NYSDOT all required documents and information necessary to progress the project to the construction phase. The Sponsor provides the completed Contract Bid Documents – Plans, Specifications, and Estimate (PS&E) Checklist (see Appendix 12-6) and PS&E Certification (Appendix 12-9) to NYSDOT for review. It is recommended that the documentation associated with NEPA Re-Evaluation also be submitted with the Contract Bid Documents. Refer to Appendix 11 of the PDM.

Appendix 12-2 Additional Construction Contract Requirements must be included in their entirety in all federally aided construction contract bid proposals that do not use NYSDOT Standard Specifications. See LPM [Chapter 9](#) Section 9.3 Construction Specifications for additional information.

### **12.3.1 Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements**

Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements, contain sworn written statements from the contractor to the Sponsor regarding conditions set by the Sponsor. Appendices 12-1 and 12-1A, in their entirety, must be included in all construction contract bid proposals. By signing the Combined Certification Form of Appendix 12-1A, the contractor certifies that the contents are true.

#### 12.3.1.1 Non-Collusive Bidding and Other Certifications

Collusion is defined as any activity that artificially affects prices when bidding on a contract or activity that restricts competition among bidders or potential bidders by exchanging or sharing information with firms presumed to be competing for the same contract. Title **23 CFR 635.112(f)**; **New York State Finance Law (SFL) Article 9, §139-d** and **General Municipal Law (GML) Article 5A, §103-d** require non-collusive bidding and other certifications in all construction contracts. The above laws require bidders to certify that the bid submitted was arrived at without resorting to any collusive bidding practices.

Additionally, federal law requires bidders to certify that they are eligible to compete for contracts under federal regulations and are not under the sanction of any federal agency, nor are any sanctions pending against the firm or owner of the firm. Title **2 CFR 1200** also requires the bidder to certify that they have not been subject to legal action regarding fraud or misconduct.

A sample signature page (see Appendix 12-1A, Non-Collusive Bidding Certifications) allows for one signature to provide multiple certifications. NYSDOT recommends using this form to simplify signing for various certifications for the same contract.

#### 12.3.1.2 Report of Violations of Non-Collusive Bidding or Other Prohibited Contract Activities

The laws noted in the **Non-Collusive Bidding Requirements** section encourage any person with knowledge of collusive bidding or other misconduct by others to report possible violations to the appropriate federal and/or state authorities. Reporting Violations of Non-Collusive Bidding Procedures Misconduct or Other Prohibited Contract Activities provides information on how to report such activities; and must be submitted with all federal-aid construction contracts.

#### 12.3.1.3 Certification for Federal-Aid Contracts: Lobbying Disclosure

Title **23 CFR 635.112(g)** requires contractors or firms intending to conduct business with the federal government or participate in contracts funded with federal aid to disclose all lobbying activities.

#### 12.3.1.4 Required Contract Provisions for Federal-Aid Construction Contracts (FHWA 1273)

All federal aid highway contracts are bound by various federal laws, rules, regulations, and presidential executive orders. These requirements address issues such as:

- General contract administration,
- Non-discrimination,
- Non-segregated facilities,
- Payment of predetermined minimum wage,
- Statements and payrolls,
- Records of materials,
- Supplies and labor,
- Subletting and assigning of the contracts,
- Safety and accident prevention,

- False statements concerning highway projects,
- Clean air and water pollution control,
- Contractor lobbying activities; and
- Other aspects of the contract and/or contractor responsibilities.

[FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts](#) includes detailed descriptions and explanations of these requirements and must be included verbatim in all federal aid highway contract packages (see Appendix 12-1).

#### 12.3.1.5 Offer Disclosure of Prior Non-Responsibility Determinations

As part of the Contractor's Bid Proposal Package, **SFL Article 9, §139j** and **139k** require contractors to complete the Offerors Disclosure of Prior Non-Responsibility Determinations form affirming that all information provided to the Sponsor is complete, true, and accurate. The form must be completed and submitted by the individual or entity seeking to enter into a Procurement Contract, Supplement or Change Order.

#### 12.3.1.6 Contract Bonds

**GML Article 5A, §103-f**, and **Standard Specifications 103-03** require the contractor to provide the Sponsor with a Faithful Performance Bond and a Labor and Material Bond from a Surety Company. The contractor shall procure and deliver bonds to the Sponsor and maintain them at their own expense and without expense to the Sponsor until final contract acceptance by the Sponsor. See the Standards Specifications noted for additional information.

#### 12.3.1.7 Bid Deposit

Bidders must submit a bid bond with each proposal for a federally aided contract. The bid bond guarantees that the bidder will enter a contract with the Sponsor for work if a Sponsor accepts a bidder's proposal. Each proposal shall be accompanied by a certified check or a bank cashier's check for a specified amount payable to the Sponsor (see NYSDOT's **Standard Specifications 102-06** and **GML, Article 5A, §102**). Bid deposits will be returned within 30 days after award to non-awarded bidders.

### **12.3.2 Civil Rights Requirements**

#### 12.3.2.1 Disadvantaged Business Enterprise (DBE) Participation

Under **49 CFR 26**, the Sponsor will ensure that the contract includes a Disadvantaged Business Enterprise (DBE) participation goal in accordance with NYSDOT's current [DBE Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. When a construction contract is funded wholly or partially with federal funds, only a DBE goal is assigned to the contract; no other State or local business enterprise goals (no M/WBE goal) can be assigned. The DBE Goal Setting Procedures (Local Program) on the NYSDOT Office of Diversity and Opportunity website linked below detail how a DBE Goal is to be set on local projects. As referenced in the procedures, to set the DBE goal, Sponsors will use the table of Construction Contract Groups, Multi-Regional (Market Area) Map, and the Baseline DBE Goal Selection Chart in the Goal Setting Tools. These forms and instructions are found on NYSDOT's Office of Diversity and Opportunity [website](#).



#### 12.3.2.1.1 Instructions to Bidders Regarding DBE Participation

**NYSDOT Standard Specification Section 102-12 (Participation Pre-Award Package)**, participation indicates that the bidder shall submit DBE commitments with its proposal, including DBE name, address, work category, a brief description of work, and commitment amount. See Appendix 12-10 DBE Commitment (previously Appendix 14-9) to assist the Sponsor in collecting the information from proposed bidders.

#### 12.3.2.2 Minority and Women-Owned Business Enterprises (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) Programs

All contracts entered into by the Sponsor that is wholly funded with state funds must be assessed to determine appropriate M/WBE and SDVOB goals. For detailed information on M/WBE and SDVOB goal setting, see LPM [Chapter 19](#) Appendix 19-1 and 19-5.

#### 12.3.2.3 Equal Employment Opportunity (EEO) Requirements

Per Title **41 CFR 60** and **23 CFR 230**, the Sponsor will ensure contracts with an Engineer's Estimate of \$10,000 or more include EEO workforce utilization goals. Their contractor shall not discriminate against any employee or applicant for employment. EEO utilization refers to workforce makeup, including women and minorities. The contract goal for minorities varies; it is dependent upon the county or counties in which the work is located. The female EEO participation goal is 6.9% throughout the State of New York. EEO requirements apply to prime contractors and their subcontractors. See Appendix 12-1.

#### 12.3.2.4 Civil Rights Monitoring and Reporting

All civil rights reporting is to be performed utilizing NYSDOT's approved civil rights reporting software, EBO (Equitable Business Opportunities Solution). Sponsors must submit an EBO access form to the RLPL with their contract bid. Information concerning EBO is found online at <https://www.dot.ny.gov/dotapp/ebo>. Sponsors should contact their RLPL for additional assistance with EBO.

#### 12.3.2.5 Title VI Assurances

The Title VI Assurances contained in *APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)* must be physically inserted into all federal aid contracts and subcontracts. Therefore, it may not be included by reference.

### **12.3.3 Other Requirements**

#### 12.3.3.1 Authority Delegation

Locally administered federal aid transportation projects will use the current NYSDOT Standard Specifications detailed in LPM [Chapter 9](#) Section 9.3. Modifications to the specifications will require written approval from NYSDOT. See [Chapter 9](#), Section 9.3.3 for more information on special specifications.

NYSDOT Standard Specifications refer to NYSDOT employees (Chief Engineer, Deputy Chief Engineer Structures, etc.) and functional units (Structures, Traffic, and Safety, etc.) to provide for approvals or to perform functions. Sponsors may or may not have access to these resources. Depending on NYSDOT's level of oversight and/or capacity to perform the work, functional unit

actions identified in NYSDOT specifications may need to be performed by contract. For example, subsurface exploration would be performed by an approved Geotechnical Consultant if NYSDOT's Geotechnical Engineering Bureau does not have the capacity for the necessary work. Costs and confirmation of availability must be identified in Schedule A of the State Local Agreement before scheduling NYSDOT technical services.

Approval authority is delegated to the Responsible Local Official (RLO) by Municipal Resolution attached to the State-Local Agreement. If the RLO is not a Licensed Professional Engineer, the RLO will recommend the plans, specifications, and estimate based on certification provided by a Licensed Professional. These delegated authorities, approvals, and functional unit actions or subcontracting shall be approved by the RLPL and documented in the Project Management Plan and the Construction Management Plan.

### 12.3.3.2 Insurance Provisions

The following insurance provisions are required when contractors, subcontractors, and their suppliers intend to conduct business in New York State:

- Workers' Compensation
- Disability Insurance
- Commercial General Liability Insurance
- Commercial Automobile
- Umbrella or Excess Liability
- Special Protective and Highway Liability

Sponsors may require other insurances, depending on the work being performed, including Professional Liability/Errors and Omissions, Railroad Protective, Marine Protection and Indemnity, Pollution Liability, and Builder's Risk.

All required insurance policies, except worker's compensation and professional liability, shall be endorsed to provide coverage to "The Sponsor, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and any consultants working for or on the project, and their agents or employees." See NYSDOT's **Standard Specifications 107-06** for more details.

### 12.3.3.3 Prevailing Wage Rates, Use of Convict Labor and Materials

Federal and state contracts must include requirements regarding prevailing wage rates, various employment practices, and the use of convict-produced materials (see NYSDOT **Standard Specifications 102-10**).

Federal wage rates must be obtained online from the official federal contracting [Wage Determinations Online website](#). The federal wage rates must be physically inserted into the contract proposal. The federal wage rates must be updated by addendum within 10 days or more before the letting,

New York State prevailing wage rates can be found online at the [New York State Department of Labor's website](#). A Prevailing Rate Case number (PRC) will be issued. If the same request is submitted multiple times, the Sponsor will be assigned a different PRC each time for the same project. Only the first four pages of the most current state wage rates, including the PRC number, need to be included in the proposal. Contractors are obligated to pay the higher of the two as both are stated as minimum rates.

#### 12.3.3.4 Buy America Requirements and Waivers

Title **23 CFR 635.410**, **23 USC 313**, and the **Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law's (BIL)** require all bidders for federal aid contracts to submit bids based on furnishing domestic materials per Standard Specifications 106-11 *Buy America*. The contract will be awarded to the bidder who submits the lowest total bid based on the Buy America requirements as detailed in Standard Specifications 106-11 *Buy America*. This includes any federal aid in any project phase regardless of whether federal aid will be applied to construction. Buy America also applies to general utility installations and municipal utilities if federal funds are involved in any project phase.

At the request of the Sponsor, NYSDOT may request from FHWA a waiver of the provisions of this section if it meets the waiver requirements as noted in Standard Specifications 106-11 *Buy America*. The submittal of a waiver request requires an extensive review and approval by FHWA and does not guarantee that a waiver will be granted.

A Sponsor may use the alternative bidding procedure to justify the use of foreign materials without requesting a waiver. Under this procedure, the total project is bid with two alternatives: one which is based on foreign source materials while the second alternative requires domestic materials. All bidders must submit a bid using domestic source materials and have the option of submitting a bid using foreign source materials. The use of foreign products is justified if the lowest total bid with domestic products is at least 25 percent more than the lowest bid with foreign source products. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for items with domestic materials detailed in Standard Specifications 106-11 *Buy America*.

#### 12.3.3.5 Changed Conditions and Disputed Work Provisions

Title **23 CFR 635.109**, "Standardized Changed Conditions Clauses," requires all FHWA funded contracts let by NYS agencies, municipalities, and/or public authorities to provide processes for equitable contract adjustments and contract disputes. Title **23 CFR 635.109** also contains three contract clauses (found in NYSDOT's **Standard Specifications 104-03**, **Standard Specifications 104-04**, and **Standard Specifications 104-05**) which must be included verbatim in each federal aid construction contract. These clauses are included in all federally funded local projects by reference to the NYSDOT Standard Specifications.

#### 12.3.3.6 Retainage Provisions

**SFL Article 9, §139-f**, and **GML Article 5-A, §106-b** does not require NYSDOT and Sponsors to hold retainage from contractors or permit the contractor to withhold retainage except for work not completed on NYSDOT administered contracts. Therefore, the limits on retainage as provided in **GML Article 5-A, §106-b** cannot be applied by the Sponsor. In accordance with Standard Specification 109-07 Prompt Payment, the Sponsor must ensure that the Contractor does not hold any. See [LPM Chapter 5.3.1.4 Retainage Policy](#).

#### 12.3.3.7 Prompt Payment Provisions

**GML Article 5-A, §106-b**, and **SFL Article 9, §139-f** require the contractor to pay their subcontractors and suppliers within seven (7) calendar days of receipt of payment from the Sponsor and provide for interest on late payments for all public works contracts. See [LPM Chapter 5.3.1.3 Prompt Payment Policy](#). The prime contractor's date of payment to subcontractors is the date that payment is sent to the subcontractors; this date is recorded in EBO. Subcontractors are required to acknowledge these payments in EBO promptly. Contract provisions stating any other payment

schedule will not be allowed; contracts cannot supersede State Finance Law. In accordance with Standard Specification 109-07 Prompt Payment, the Contractor will not withhold payment to subcontractors or DBE/MBE/WEB/SDVOB's due to disputes about the quantity of work performed. See Construction Administration Manual (MURK Part 1A) for additional information.

## **12.4 MISCELLANEOUS REQUIREMENTS**

### **12.4.1 Residency and Other Requirements**

Title **23 CFR 635.110(b)** prohibits the Sponsor from imposing unusual contract specifications, including requirements for an award or submitting a bid, such as residency requirements or geographical or other restrictions, which tend to restrict competition. Such requirements cannot be part of the solicitation for bids or the bid proposal package nor appear in any advertisement for bids.

### **12.4.2 Specialized Experience Requirements**

The special requirements for determining the lowest responsible bidder should be clear, reasonable, and consistent with standard industry practices. For instance, on a project involving historic preservation, several years of experience in the historic preservation field, or at least three completed historic preservation contracts similar in size and scope would be a reasonable requirement. However, special expertise cannot be written to preclude any bidder from submitting a bid and can only be used to determine the lowest responsible bidder. Below is an example of an appropriate clause for historic preservation work which may be included in a bid proposal package.

Due to the highly sensitive nature of the historic preservation work in this contract, as a condition of the award, bidders must have at least \_\_\_\_\_ years' experience working with historic (timber, iron, etc.) structures (bridges, buildings, etc.), including work on similar contracts or structures. In addition, the bidder must include a list of current and previously completed historic preservation contracts in its bid package, including the name of the contract owner, a contact person, and telephone number so that references can be verified. The contract will be awarded to the lowest responsible bidder who meets the experience specifications.

### **12.4.3 Wicks Law Requirements**

Known as Wicks Law, **GML Article 5-A, §101** and **SFL Article 9 §135**, applies to State agencies, certain public benefit corporations, municipalities, school districts, and boards of cooperative educational services but does not apply to private building construction. This is a New York State statute, and NYSDOT has no authority to grant waivers. The law applies if a construction contract involves building construction and the total construction contract value exceeds:

- \$3 million in Bronx, Kings, New York, Queens, and Richmond Counties,
- \$1.5 million in Nassau, Suffolk, and Westchester Counties, or
- \$500,000 in all other counties in New York State.

**GML Article 5-A, §101** requires the contract owner (Sponsor) to bid and execute separate contracts for general construction, plumbing, heating/ventilating/air conditioning, and electrical components for building construction. For any project which does not meet the above thresholds and is not let with separate contracts, this law applies in the following ways:

- All bidders must submit with their bids a sealed list of the subcontractors that will perform the plumbing, H/V/AC, and electrical work.
- The successful low bidder's sealed list will be opened, and the Contractor is required to use the list of subcontractors unless there is a legitimate construction need to change the subcontractor. The Sponsor's approval is required for a change to be made.
- The sealed lists are returned unopened to the non-selected bidders.

#### 12.4.4 Prequalification

**GML Article 5-A, §103** allows political subdivisions (municipalities) with populations over 50,000 to prequalify bidders. The prequalification program establishes guidelines governing the qualifications of bidders for construction/procurement contracts. These programs are allowed if the Sponsor maintains an appropriate list of qualified bidders who meet the Sponsor's established standards. Indication of the use of a pre-qualified bidder must be noted in the advertisement of the project. The established standards shall consider the prospective bidders' experience and the past performance of work completed by the prospective bidders as well as:

1. The prospective bidders' ability to undertake the type and complexity of work,
2. The financial capability, responsibility, and reliability of the prospective bidders for such type and complexity of work,
3. The record of the prospective bidders in complying with existing labor standards and maintaining harmonious labor relations,
4. The prospective bidders' compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with disadvantaged businesses through joint ventures or subcontractor relationships; and
5. The record of the prospective bidders in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidders' [Workers Compensation Experience Modification Rate](#) for each of the last three years.

The Sponsor's prequalification process must have a documented appeal process for firms denied a place on a pre-qualified list. In addition, NYSDOT must review and approve any prequalification provisions.

#### 12.4.5 Project Labor Agreement

**NYS Labor Law Article 8, §222** allows Sponsors to use a Project Labor Agreement (PLA) when it has been determined that the Sponsor's interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud, and corruption, and other considerations such as the impact of delay, and the possibility of cost savings are best met by requiring a PLA. Project Labor Agreement shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization. The trade labor organization is the collective bargaining representative for all persons who will perform work on a public works project. Only contractors and subcontractors who sign a pre-negotiated agreement with the trade labor organization can perform project work.

It should be noted that any project undertaken with a PLA shall:

- For design, be subject to the review and approval of the Sponsor; and the design and construction standards are subject to the review and approval of NYSDOT,
- Contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment and a performance bond for the faithful performance of the project,
- Participate in an apprentice training program if the project exceeds the noted values under **NYS Labor Law Article 8, §222**.

The use of a PLA must :

- Be consistent with **23 United States Code (USC) 112**,
- Lead to a more effective use of federal funds; and
- Be in compliance with all **Title 23** and **Title 49 USC** and **CFR** requirements.

To accomplish consistency and compliance with the referenced codes, a complete study, analysis, and report must be prepared by an independent consultant retained by the Sponsor who is



experienced in the development and implementation of PLA's and has not been retained to perform the design of the project. The consultant must conduct a thorough project analysis of the costs/benefits of a PLA and document specific facts and figures in the Due Diligence Impact Study Report.

NYSDOT will review all PLA's prior to submitting to FHWA for approval, including Design-Build. The final report must be provided to the RLPL to be included in the project files.

The NYS Office of General Services (OGS) has a contract for Project Labor Agreement Services that Sponsors may use to select a firm. The Sponsor must use the mini-bid process to solicit a cost estimate from all on the list before selecting one firm. If a Sponsor uses the OGS Contract, the federal requirements as found in Appendices 12-1 and 12-1A must be incorporated into the contract. Therefore, the Sponsor would be eligible for reimbursement only if the federal requirements are incorporated into the contract.

#### **12.4.6 Design-Build**

The "[New York City Public Works Investment Act of 2019](#)" authorized the New York City's Department of Design and Construction and Department of Transportation to undertake public work projects pursuant to project labor agreements that cost \$10 million or more, use of the alternative delivery method known as Design-Build contracts. The [New York State Department of Transportation Design-Build Procedures Manual](#) provides the procedures to be followed. No other Sponsor is permitted at this time to utilize Design-Build as an alternative delivery method.

#### **12.4.7 Warranties and Specialty Items**

**Title 23 CFR 635.413** generally prohibits the Sponsor from requiring a contractor to warrant or guarantee its overall workmanship for some time after the contract work is accepted. Warranties and guarantees are not allowed on federal aid contracts and should not be part of the contract bid proposals. Warranties for routine maintenance items not within the control of the contractor are prohibited. Specific Sponsor requests to use warranty clauses must be submitted to the RLPL for NYSDOT approval before Contract Bid Document Package submission. Standard manufacturers and suppliers' warranties on installed equipment and materials are allowed under federal regulations without additional approval. See **Standard Specifications 105-18 and 105-19** for more information.

#### **12.4.8 Training and Apprenticeship Requirements**

Training is one of the Civil Rights activities that may be used to address the under-utilization of minorities, females, and economically disadvantaged persons in highway construction and engineering contracts. The Sponsor must include Item 691 Training and Apprenticeship Requirements if the construction cost is estimated above \$5M. It should be noted that if the construction cost is below \$5M and there is an opportunity for training, the item may be included. The program requirements must be reviewed and approved by both NYSDOT and FHWA. Only FHWA-approved On-the-Job Training (OJT) programs or NYS Department of Labor (NYSDOL)/U.S. Department of Labor (USDOL) registered apprenticeship programs may be used to fulfill training requirements. The review and approval processes are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate with their RLPL. See Highway Design Manual (HDM) 21.4.3.2 Training Requirements.

### 12.4.9 NYSDOT Oversight

There are times where different phases of the project, such as preliminary design, detailed design, right-of-way, construction inspection, or construction, are not funded with federal funds. If the construction phase is not advanced with federal funds, NYSDOT must provide oversight and ensure compliance in the areas of Environmental Commitments, Right-of-way (ROW) Requirements/Acquisition, and Buy America provisions.

## 12.5 CONTRACTING METHODS

Title **23 CFR 635** describes federal regulations governing construction contracts let by a Sponsor for which the Sponsor anticipates federal reimbursement. Title **23 CFR 635.104(a)** requires construction contracts to be awarded to the lowest responsible bidder, as determined by a competitive bidding process. The Sponsor must comply with federal aid competitive bidding requirements. NYSDOT is the primary recipient of FHWA funding. When receiving federal funds, NYSDOT must monitor and assure compliance with federal regulations on contracts initiated by a project Sponsor or subcontracts initiated by a contractor.

Failure to comply with all federal and state laws, rules, regulations, and federal presidential and state gubernatorial executive orders may result in the loss of federal aid and removal of NYSDOT and/or FHWA participation from the project. In addition, the State may deduct other state or federal aid due to the Sponsor's future payments. Refer to [Chapter 4](#), Local Project Agreements, for rules and regulations regarding possible repayment of funds to NYSDOT. For additional requirements regarding construction contract administration and compliance, see [Chapter 15](#).

Costs found to be ineligible after payment was made to the Sponsor must be repaid to New York State. NYSDOT will reduce current or future reimbursement claims on the same or other projects the Sponsor may have with NYSDOT if the Sponsor fails to repay.

### 12.5.1 Force Account Work by Sponsors

Title **23 CFR 635.104(a)** requires competitive bidding for construction contracts unless provided in **23 CFR 635.104(b)**, some other method is more cost-effective. Force Account Construction by the Sponsor is one method utilized. Title **23 CFR 635.201-205** documents the federal requirements for Force Account Construction. NYSDOT or FHWA must approve all requests to use Force Account Work on local let construction projects.

#### 12.5.1.1 Public Interest Finding

Title **23 CFR 635.104(b)** provides the option for a Sponsor to determine if it is more cost-effective to use its resources to perform the work adequately than competitive bidding on a local-let, federally aided construction contract (i.e., Force Account Work). The Sponsor must submit to the RLPL in writing a request justifying why "no-bid force account work" is necessary. This can be justified by showing how it is cost-effective to use the Force Account method vs. competitive bidding (e.g., during emergency conditions). This request is called a Public Interest Finding (PIF).

- For projects OFF the National Highway System (NHS), the PIF will be submitted to NYSDOT for approval.
- For projects ON the NHS, the PIF will be submitted by NYSDOT to FHWA for approval. See Appendix 12-4 for the PIF form, instructions, and transmittal letter.

### 12.5.1.2 Use of Sponsors' Equipment or Materials

Generally, Sponsors cannot require the prime contractor to use the Sponsor's equipment or materials as a condition or pre-condition of awarding the contract. However, if documented in the PIF, exceptions may be allowed by NYSDOT or FHWA. Equipment must be acquired through competitive bidding or produced by municipal forces. The Contractor must have the option to use their own equipment. Cost for equipment must be based on rental rates or unit prices, and points of availability shall be documented in the Contract Bid Package.

**Note:** Sponsors cannot profit from the rental of their equipment or materials.

### **12.5.2 Using Alternate Bidding**

If the Sponsor utilizes an alternate bid process to stay within budget limits, the alternate bid process must be clearly described in the bid proposal. A Sponsor cannot use an alternate process where the Sponsor may arbitrarily choose from among the alternate bid items. An arbitrary process may create an impression of impropriety. FHWA has accepted the method described in the Alternate Bidding Section of this chapter.

A Sponsor may choose alternate bidding to maximize the benefits of the funding available for a contract. In general, the concept allows for Contractors to bid on the elements of the basic contract scope (base bid) first as well as submit bids on work outside of the basic contract scope: the alternate bid items. These alternates can be either additions or deletions from the basic contract scope. Bids on the basic scope of the contract and the alternate items are submitted at the same time and opened at the same time.

If the Sponsor receives a bid on the basic scope which is less than the Engineer's Estimate for the basic scope, bids on the alternate items are considered according to a predetermined order of priority, so long as the total bid price remains under the total contract budget (see Scenario #1). Conversely, if all bids exceed the Engineer's Estimate, Sponsors may delete alternate bid items, subject to a priority ranking, to stay within the contract budget (see Scenario #3).

#### 12.5.2.1 Format for Alternate Bidding

The use of alternate bid items is permissible under strict budgetary circumstances. To assure bidders of the integrity of the competitive bid process, the criteria and formula for determining the low bidder in an alternate bid process must be fully and clearly described in the bid proposal documents. The bid solicitation must advise potential bidders that alternate bidding will be used. Whether adding or deleting alternate items, the Sponsor must prioritize the alternate bid items and follow a rational sequence when selecting the alternate items. The Sponsor is not free to pick and choose among the alternates. The following format must be adhered to.

**EXAMPLE:** If a budgeted figure cannot be exceeded, the total budget figure should be announced at the public bid opening just prior to opening the bids. The bid proposal should state the criteria on which award will be based as follows:

- If any bids for the base bid plus Alternates 1-3 come under the budget figure, the award will be made based on the base bid plus Alternates 1-3; however,
- If all bids for the base bid plus Alternates 1-3 exceed the budget figure, the award will be based on the base bid plus Alternates 1 and 2; however,
- If all bids for the base bid plus Alternates 1 and 2 exceed the budget figure, the award will be based on the base bid plus Alternate 1; however,
- If all bids for the base bid plus Alternate 1 exceed the budget figure, the award will be based on the base bid only; however,



- If all bids for the base bid exceed the budget figure, the award will be based on the base bid and Alternate 4 (deduct item); however,
- If all bids for the base bid and Alternate 4 (deduct item) exceed the budget figure, the award will be based on the base bid and Alternates 4 and 5 (deduct items); however,
- If all bids for the base bid and Alternates 4 and 5 (deduct items) exceed the budget figure, the award will be based on the base bid plus Alternates 4, 5, and 6 (deduct items)

Scenarios #1, #2, and #3 below illustrate the above example in determining the low bidder when alternate bid items are used.

**SCENARIO #1**

**BUDGET FIGURE \$200,000**

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$150,000	\$20,000	\$20,000	\$20,000	\$210,000
B	\$170,000	\$15,000	\$ 7,000	\$ 7,000	\$199,000
C	\$185,000	\$17,000	\$10,000	\$ 3,000	\$215,000
D	\$175,000	\$18,000	\$ 5,000	\$15,000	\$213,000

**BIDDER B is the low bidder, using base bid plus Alternates 1-3, for a total of \$199,000.**

**SCENARIO #2**

**BUDGET FIGURE \$200,000**

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$196,000	\$ 8,000	\$ 8,000	\$ 8,000	\$220,000
B	\$192,500	\$10,000	\$ 2,000	\$ 8,000	\$212,500
C	\$194,000	\$11,000	\$ 6,000	\$ 9,000	\$220,000
D	\$190,000	\$15,000	\$ 5,000	\$15,000	\$225,000

**BIDDER D is the low bidder based on the base bid only. All other applications of the formula exceed the budget figure.**

**SCENARIO #3**

**BUDGET FIGURE \$200,000**

BIDDER	BASE BID	ALT.#1	ALT.#2		ALT.#3	ALT.#4	ALT.#5	ALT. #6
A	\$220,000	\$ 8,000	\$ 9,000		\$ 8,000	(\$10,000)	(\$10,000)	(\$10,000)
B	\$225,000	\$ 7,000	\$ 7,000		\$ 8,000	(\$ 8,000)	(\$ 7,000)	(\$ 8,000)
C	\$215,000	\$10,000	\$ 7,000		\$ 6,000	(\$10,000)	(\$ 6,000)	(\$ 5,000)
D	\$230,000	\$10,000	\$10,000		\$ 7,000	(\$12,000)	(\$10,000)	(\$ 8,000)

**BIDDER C is the low bidder, based on the base bid plus Alternates 4 and 5 (\$215,000 minus \$10,000) (Alt. #4) and minus \$6,000 (Alt. #5), total price \$199,000 following the formula.**

## 12.6 REFERENCES

### Federal Laws and Regulations

[USC Title 23](#) United States Code – Title 23 Highways  
[USC Title 49](#) United States Code – Title 49 Transportation  
[Code of Federal Regulations](#) Code of Federal Regulations  
[2 CFR 1200](#) Debarment  
[23 CFR 112](#) Letting of Contracts  
[23 CFR 230](#) External Federal Highway Programs  
[23 CFR 635](#) Construction and Maintenance  
[23 CFR 635.104\(a\)\(b\)](#) Method of Construction  
[23 CFR 635.105\(c\)\(4\)](#) Supervising agency  
[23 CFR 635.109](#) Standardized changed condition clauses  
[23 CFR 635.110\(b\)](#) Licensing and qualification of contractors  
[23 CFR 635.111](#) Tied Bids  
[23 CFR 635.112\(e\)\(f\)\(g\)](#) Advertising for bids  
[23 CFR 635.114\(a\)](#) Award of contract and concurrence in the award  
[23 CFR 635.201-205](#) Force Account Construction  
[23 CFR 635.410](#) Buy America requirements  
[23 CFR 635.413](#) Guaranty and warranty clauses  
[41 CFR 60](#) (Equal Opportunity Clauses – Compliance Reports  
[49 CFR 20.100](#) Conditions on use of funds  
[49 CFR 26](#) Disadvantaged Business Enterprises, (DBE)

### State Laws and Regulations (State Finance Law, (SFL) & Labor Law)

[Article 9, Section 135](#) Separate specifications for contract work  
[Article 9, Section 139-d](#) Statement of non-collusion in bids to the state  
[Article 9, Section 139-f](#) Payment on public work projects  
[Article 9, Section 139-j](#) Restrictions on contracts during the procurement process  
[Article 9, Section 139-k](#) Disclosure of contracts and responsibility of offers  
[Article 9, Section 146](#) Certain construction contracts involving steel  
[NYS Labor Law, Article 8, Section 222](#) Project Labor Agreements, (PLAs)

### General Municipal Laws and Regulations (General Municipal Law (GML))

[Article 5-A, Section 101](#) Separate specifications for certain public work  
[Article 5-A, Section 102](#) Deposits on plans and specifications  
[Article 5-1, Section 103](#) Political Subdivisions  
[Article 5-A, Section 103-d](#) Statement of non-collusion bids  
[Article 5-A, Section 103-f](#) Security bonds on municipal projects  
[Article 5-A, Section 106-b](#) Payment on public work projects

### Other:

FHWA Contract Administration Core Curriculum Manual (Buy America)  
<https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>

FHWA Project Labor Agreements  
<https://www.fhwa.dot.gov/construction/contracts/100507.cfm>

FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts  
<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

MURK Part 1A Contract Administration Manual (CAM)  
[https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk\\_1a](https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a)

New York State Department of Labor's Prevailing Work and Public Wage  
<http://labor.ny.gov/workerprotection/publicwork/PWRateSch.shtm>

US Government Wage Determinations  
<https://beta.sam.gov/search?index=wd>

Workers Compensation Experience Modification Rate  
<http://www.safetymanagementgroup.com/emr-experience-modification-rate.aspx>

**APPENDIX 12-1**

**CONSTRUCTION CONTRACT REQUIREMENTS**

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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (FHWA Section 1273 X)**

A. The prospective bidder certifies to the best of its knowledge and belief that they and their Principals:

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

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

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

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

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

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (FHWA 1273 Section XI)**

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

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

2. If any funds other than federally 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.

B. 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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The prospective bidder also agrees by submitting his/her bid or proposal that he/she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that such subrecipients shall certify and disclose accordingly.

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.**

**FALSE CLAIMS CERTIFICATION (31 USC §3729, NYS Finance Law Article 13)**

Under the Federal False Claims Act, 31 U.S. Code §3729, any person or entity who knowingly presents, or causes to be presented to the Federal Government, a false or fraudulent claim for payment or approval is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the Government sustains.

Under the New York State False Claims Act, NYS Finance Law Article 13, any person or entity who knowingly presents or causes to be presented to the State of New York or Local Governments within the State of New York, a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of damages the Government sustains.

“Knowingly” is defined as (1) actual knowledge; (2) acting in deliberate ignorance of the truth or falsity of information; or (3) acting in reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

The Contractor to whom the above-identified contract is to be awarded does hereby certify to the New York State Department of Transportation that it understands the prohibitions under the Federal and New York State False Claims acts and that it has not and will not submit or cause to be submitted any fraudulent claims in the submission of this bid or in connection with the above-identified contract. The Contractor further certifies that it understands retaliatory actions against employees and officers who initiate a *qui tam* (public) action on behalf of the government or cooperate in the investigation of a false claim are prohibited and are subject to an assessment of damages and penalties under the provisions of the Federal and New York State False Claims Acts.

**THIS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.**



**NON-COLLUSIVE BIDDING CERTIFICATION  
(NYS Finance Law §139-d and General Municipal Law §103-d)**

1. By submission of this bid:

(a) Each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award, nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided, however, that if in any case, the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons, therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award, nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised pricelists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation."

**STATE NON-COLLUSIVE BIDDING CERTIFICATIONS MUST BE INCLUDED IN EVERY BID  
PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL  
SPECIFICATIONS ARE USED.**

**NON-COLLUSIVE BIDDING CERTIFICATION (2 CFR 1200)**

"By submission of this bid, the Bidder does hereby tender to the Owner this sworn statement pursuant to Section 1128 of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112 of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

The signatory to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency,
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the past three years,
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions).

**FEDERAL NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.**

**REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES,  
MISCONDUCT OR OTHER PROHIBITED CONTRACT ACTIVITIES**

**US DEPARTMENT OF TRANSPORTATION  
OFFICE OF INSPECTOR GENERAL - FRAUD, WASTE & ABUSE HOTLINE**

The U.S. Department of Transportation (USDOT) Office of Inspector General (OIG) maintains a Hotline for receiving allegations of fraud, waste, abuse, or mismanagement in USDOT programs or operations. Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract-related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the Hotline at 1-800-424-9071, emailing [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov), or writing to the USDOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. Allegations may be reported 24 hours a day, seven days a week by DOT employees, contractors, or the general public.

**NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL HOTLINE**

The New York State Office of the Inspector General maintains a Hotline for receiving allegations of governmental misconduct. Reports of New York State governmental misconduct may be made in strict confidence to the Toll-Free 24-hour Statewide HOTLINE at 1-800-DO RIGHT (1-800-367-4448), the online complaint form at [www.ig.ny.gov](http://www.ig.ny.gov) or in writing to the New York State Office of the Inspector General, Empire State Plaza, Agency Building 2 - 16th Floor, Albany, New York 12223.

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED  
IN EACH BID PROPOSAL.**

**GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION**

The Contractor shall follow the requirements of NYSDOT Standard Specification §102-11 *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

<b>GOALS FOR PARTICIPATION OF MINORITIES</b>					
<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	Table	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

<b>GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS, AND RICHMOND COUNTIES</b>			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

**GOAL FOR PARTICIPATION OF WOMEN**

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

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

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

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).

**ATTACHMENTS**

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e). The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

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

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

classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

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

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S.

Department of Labor (US DOL) and FHWA requirements.

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

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

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

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

program and who must be assigned adequate authority and responsibility to do so.

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

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

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and

women in the area from which the project work force would normally be derived.

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

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

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

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

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

b. The contractor will periodically evaluate the spread of wages paid within each classification

to determine any evidence of discriminatory wage practices.

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

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

**6. Training and Promotion:**

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals



(even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:**

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

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

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

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

**10. Assurances Required:**

DOT’s FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

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

**11. Records and Reports:**

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

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

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

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

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

**III. NONSEGREGATED FACILITIES**

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

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

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

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

a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

**1. Minimum wages (29 CFR 5.5)**

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred

during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (ii) The classification is used in the area by the construction industry; and
- (iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

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

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is used in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an

authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

**2. Withholding (29 CFR 5.5)**

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

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprourement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

**3. Records and certified payrolls (29 CFR 5.5)**

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

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

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

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

*b. Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

*(2) Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at



<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

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

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

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

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

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

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

handwritten signature or a legally valid electronic signature.

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

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

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

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

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension

of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

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

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

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they

perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

the contractor's registered program must be observed.

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

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

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

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

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

lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

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

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

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

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

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

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

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



harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or
- d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

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

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

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any

violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section. \* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

**3. Withholding for unpaid wages and liquidated damages**

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of

whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

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

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

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

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

threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring

leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

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

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

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

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

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

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

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

contracting officer determines is necessary to assure the performance of the contract.

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

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

**VII. SAFETY: ACCIDENT PREVENTION**

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29

CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be

performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

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

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

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

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may

direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

**1. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier

participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

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

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

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

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

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**



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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly

enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

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

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

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

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

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

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

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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



all such recipients shall certify and disclose accordingly.

directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**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

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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

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

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

## **APPENDIX 12-1A**

# **CONSTRUCTION CONTRACT REQUIREMENTS FILLABLE FORMS**

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**ALL FORMS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED  
IN EACH BID PROPOSAL.**

**NON-COLLUSIVE BIDDING CERTIFICATION  
BIDDER INFORMATION**

Bidder to provide information listed below:

Bidder Address:

Street or P. O. Box No.

City

State

ZIP

Federal Identification No.:

Name of Contact Person:

Phone # of Contact Person:

**If Bidder is a Corporation:**

President's Name & Address:

Secretary's Name & Address:

Treasurer's Name & Address:

**If Bidder is a Partnership:**

Partner's Name & Address:

Partner's Name & Address:

**If Bidder is a Sole Proprietorship:**

Owner's Name & Address:

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN  
EACH BID PROPOSAL.**

# Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual of Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

NO  YES

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j?

NO  YES

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

NO  YES

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility:

*(Add additional pages as necessary.)*

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

NO  YES

6. If yes, please provide details below.

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:

*(Add additional pages as necessary.)*

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date:

Signature

Name:

Title:

## COMBINED CERTIFICATION FORM

### BY EXECUTING THIS DOCUMENT, THE CONTRACTOR AGREES TO:

1. Perform all work listed in accordance with the Contract Documents including all amendments, at the prices bid; subject to the Changed Conditions provisions if applicable,
2. Accompany this proposal with a bid bond, certified check or bank cashier's check for the specified amount of deposit required,
3. All the terms and conditions of the non-collusive bidding certifications required by §139-d of the State Finance Law and 2 CFR Part 1200,
4. Certify, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts-Section X "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion",
5. Certify that no Federal appropriated funds have been paid or will be paid, to any person for lobbying a Federal official or employee, or disclosure was made in accordance with 31 USC 1352 required by FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts-Section XI "Certification Regarding Use of Contract Funds for Lobbying",
6. Attest that its performance of the services outlined in this proposal does not and will not create a conflict of interest with nor position the firm to breach any other contract currently in force with the State of New York,
7. Certify that it understands the prohibitions under the Federal False Claims Act (31 USC §3729) and the New York State False Claims Act (NYS Finance Law Article 13),
8. Certify that all information provided to the Department with respect to the requirements contained in the Procurement Lobbying Law (State Finance Laws §139-j and §139-k) is complete, true and accurate,
9. Affirm, under penalty of perjury, that all the responses provided to the Department with respect to its submitted Form CCA-2 New York State Vendor Responsibility Questionnaire For-Profit Construction, are complete, true, and accurate, and further affirms and acknowledges that it must remain a responsible Contractor throughout the duration of the contract, in accordance with §105-05 Vendor Responsibility,
10. Provide commitments to meet the established DBE goal(s) prior to award or demonstrate good faith efforts to do so,
11. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the New York State Labor Law.



12. Certify to all other clauses required by this proposal and contained herein.

Dated \_\_\_\_\_, 20

\_\_\_\_\_  
Legal Name of person, firm or corporation

By \_\_\_\_\_  
Signature (Title)

**(Acknowledgment by Individual Contractor)**

STATE OF NEW YORK \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be described in and who executed the foregoing instrument, and that he/she acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

**(Acknowledgment by Individual Contractor, If a Corporation)**

STATE OF NEW YORK \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who being duly sworn by me, did depose and say that he/she resides at \_\_\_\_\_, and that he/she is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation described in and which executed the above instrument, and that he/she signed his/her name thereto on behalf of said Corporation by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary Public

**(Acknowledgment of Co-Partnership Contractor)**

STATE OF NEW YORK \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_, consisting of himself/herself and \_\_\_\_\_, and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_ and that he/she had authority to sign same, and did duly acknowledge to me that he/she executed same as the act and deed of said firm of \_\_\_\_\_ for the uses and purposes mentioned herein.

\_\_\_\_\_  
Notary Public

### Federal DBE Commitment and GFE Bid Requirements

Letting Date:

Proposer Name

Address:

PIN   
 Contract #   
 DBE Goal  % as Stated in the Advertisement

We hereby submit a DBE commitment of  % for the above-referenced project.

Identified below are the commitment(s) to certified\* DBE's for this contract:

<u>DBE Name:</u>	<u>Work Category*</u>	<u>Description of Work</u>	<u>DBE Credit % (A)</u>	<u>Commitment (B)</u>	<u>DBE Credit (AxB)</u>
Example Company: Drainage R Us Address: 2543 Lexington Street, Troy, NY 12180	Construction	Closed Drainage Installation	100	\$1,120,000	\$1,120,000
Address: <input type="text"/>					
Address: <input type="text"/>					
Address: <input type="text"/>					
Address: <input type="text"/>					
Address: <input type="text"/>					
Address: <input type="text"/>					

*\*Only submit DBE(s) that you have verified are certified to perform/supply the identified commitments.* **Total Commitment:**

You are required to have firm commitments at the time of Letting. Within 5 calendar days of notification as apparent Low Bidder, you shall enter exactly (as shown) all of the DBE commitments identified here, into Equitable Business Opportunity Solution (EBO), NYSDOT's civil rights reporting software. No substitutions or reductions in commitments will be allowed without prior approval by the Sponsor, in accordance with NYSDOT Standard Specification §105-21.D.3.

*NOTE: Bids may be submitted below the DBE Goal. If you do not meet the DBE Goal and are identified as apparent Low Bidder, you will be required to submit a Good Faith Effort package to the Sponsor, within 5 calendar days of notification.*

<u>*Key:</u>	<u>Work Categories:</u>	<u>DBE Credit %</u>
	Construction	100
	Fabricator	100
	Manufacturer	100
	Material Supplier	60
	Professional Service	100
	Trucking Firm	100

Submitted By:

Enter Proposers Contact Information

Name:

Title:

Company Federal Tax ID XX-XXXXXXX

New York State  
Department of Transportation  
**Local Projects Manual**

**Chapter 13**  
**Civil Rights Requirements**

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## Acronyms

ADA	Americans with Disabilities Act	MBE	Minority Business Enterprise
ADP	Advance Detail Plans	M/WBE	Minority and Woman Business Enterprise
A&E	Architectural & Engineering	NYSDOL	New York State Department of Labor
CAM	Construction Administration Manual	NYSUCP	New York State Unified Certification Program
CFR	Code of Federal Regulations	NYSDOT	New York State Department of Transportation
DBE	Disadvantaged Business Enterprise	ODO	New York State Department of Transportation Office of Diversity and Opportunity
EBO	Equitable Business Opportunities	PEO	Presidential Executive Order
EEO	Equal Employment Opportunity	RLO	Responsible Local Official
EI	Engineering Instruction	RLPL	Regional Local Project Liaison
FHWA	Federal Highway Administration	SDVOB	Service-Disabled Veteran-Owned Business
GFE	Good Faith Effort	USDOJ	United States Department of Justice
HDM	Highway Design Manual	USDOL	United States Department of Labor
LEP	Limited English Proficiency	USDOT	United States Department of Transportation
LPM	Local Projects Manual	WBE	Woman- Business Enterprise

## NOTE

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter references) can be found at the end of this chapter in **Section 13.15 References**.

## 13.1 INTRODUCTION

This chapter provides an overview of federal and state Civil Rights laws, rules, regulations, and presidential and gubernatorial executive orders for locally administered transportation projects. The New York State Department of Transportation (NYSDOT) policy ensures equal opportunity and prevents discrimination in all its activities. NYSDOT and project sponsors (denoted as “Sponsor[s]” hereafter) share this compliance responsibility in meeting federal and state Civil Rights law requirements on locally administered transportation projects. Various chapters within the Local Projects Manual (LPM), as well as NYSDOT’s Standard Specifications, NYSDOT’s Manual of Uniform Recordkeeping (MURK) Part 1A Construction Administration Manual (CAM), and the Highway Design Manual (HDM) provide additional Civil Rights functional guidance.

## 13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

**Title VI of the Civil Rights Act of 1964** and related nondiscrimination statutes require recipients<sup>1</sup>, including the NYSDOT, of federal financial assistance to ensure that no one is excluded from participation in, denied the benefits of, or subjected to discrimination based on race, color, or national origin in any federally assisted program and activity.

Per **23 CFR 200.9**<sup>2</sup>, Sponsors that receive Federal Highway Administration (FHWA) funds through NYSDOT must have a Title VI Program subject to review and approval by NYSDOT. The Title VI Program’s purpose is to prohibit discrimination and ensure nondiscrimination through policies, procedures, benefits and services, and regular program reviews. In addition, the Title VI Program requires Sponsors to specify how they will implement their Title VI responsibilities.

NYSDOT is required to perform formal annual compliance reviews of Sponsors receiving federal funds. Sponsors will be required to document their Title VI compliance through a NYSDOT audit review that includes an evaluation of how they administer their overall Title VI Program throughout all program areas.

Sponsors must summarize their efforts regarding how they monitor nondiscrimination in programs and activities that impact the public. The program areas include, but are not limited to:

- Planning
- Environment
- Project Development (Design)
- Right-of-Way

<sup>1</sup> The term recipient is used to refer to an entity or entities that directly receive federal financial assistance from the United States Department of Transportation (USDOT) through the Federal Highway Administration (FHWA).

<sup>2</sup> The term subrecipient is used to refer to an entity or entities that indirectly receive federal financial assistance from the USDOT through the FHWA. For consistency throughout this Manual, the term Sponsor(s) will be used to refer to subrecipient(s).

- Construction
- Maintenance
- Traffic Safety
- Research
- On-the-Job Training Programs

Sponsors have the option of:

- Adopting by a resolution [Appendices 13-1 through 13-4](#) of a [Title VI Plan](#) and applicable procedures, or
- Developing their own Title VI Plan with approval from [NYSDOT's Office of Diversity and Opportunity \(ODO\)](#).

**Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.**

### 13.2.1 Sponsor's Title VI Requirements

A Sponsor's Title VI Plan must have policies and procedures in place to ensure Title VI compliance. These policies include:

- Title VI Assurances (signed and dated),
- Nondiscrimination Policy Statement (signed and dated),
- Title VI Plan (signed and dated) that includes Limited English Proficiency (LEP) Plan,
- Americans with Disabilities Act (ADA) Transition Plan,
- Monitoring/Review Process, Data Collection, and Analysis of participants,
- Designated Title VI Coordinator and an outline of their responsibilities,
- Complaint Form, with applicable processes, procedures, and issue resolution process,
- Public Involvement Plan that includes Public Dissemination of Title VI Information, and
- Schedule of Title VI Training (with recorded dates and target audience).

The Sponsor's overall Title VI Plan ([Appendices 13-1 through 13-4](#)) must include all of the above areas. Each area must be addressed in its entirety.

**Fillable forms for all required policies and procedures can be found on NYSDOT website.**



### **13.2.1.1 Sponsor's Title VI Assurance**

The Sponsor's Responsible Local Official (RLO) or designee must have a signed and dated Title VI Assurance in place. The Sponsor must ensure that all programs, policies, procedures, activities, services, and facilities are implemented and operated in a nondiscriminatory manner. Title VI Assurance is a shared responsibility for all involved in delivering federal and state-funded projects.

### **13.2.1.2 Sponsor's Nondiscrimination Policy Statement**

The Sponsor must maintain a current Title VI/Nondiscrimination Policy Statement. The Statement must inform the public of the Sponsor's commitment to nondiscrimination in all programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability, or low-income status, or limited-English proficiency be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity administered by the Sponsor or the Sponsor's contractors/subcontractors whether it is federally assisted or not. The policy statement must be signed and dated by the RLO or designee. The Statement must include the following provisions:

- A commitment to the nondiscrimination provisions of Title VI,
- Disseminate Title VI information to the general public and publish where appropriate,
- Ensure Title VI provisions are in all contracts and subcontracts with subcontractors,
- Participate in training offered on Title VI and other nondiscrimination requirements,
- Extend subcontracting opportunities to Disadvantaged Business Enterprises (DBEs),
- Maintain current and accurate records that demonstrate and document Title VI compliance, including collecting racial and ethnic data on persons impacted,
- Appoint a Title VI/Nondiscrimination Coordinator with direct access to the RLO, and
- Develop a complaint process and take affirmative action to correct any deficiencies within a reasonable time.

### **13.2.1.3 Sponsor's Title VI Plan**

Sponsors must develop and maintain a Title VI Plan that documents procedures for complying with Title VI Program requirements. Sponsors may use the Sample Title VI Template ([Appendix 13-1 through 13-4](#)) or develop their own. Sponsors that develop their template must submit the plan for approval to NYSDOT. The Sponsor must have procedures to review their processes and collect and analyze data.

### **13.2.1.4 Monitoring and Review Process**

Sponsors must develop procedures for identifying and addressing potential discrimination or discriminatory practices within their departments/agencies. The Title VI Plan must include procedures on how the Sponsor's departments/agencies are monitored and reviewed for Title VI

compliance and outline procedures to eliminate and address discrimination and resolve deficiencies when non-compliance occurs. In addition, Sponsors administering federal and state aid contracts must monitor prime contractors, subcontractors, consultants, and sub-consultants for Title VI compliance.

### **13.2.1.5 Data Collection and Analysis**

Sponsors must develop procedures for collecting statistical data (race, color, national origin, and sex) of participants in and beneficiaries of the Sponsor's programs. Collecting data helps New York State identify and prioritize problem areas and evaluate policies and programs' effectiveness to ensure nondiscrimination. The Title VI Plan must describe how the Sponsor plans to collect Title VI-related data on an ongoing basis.

## **13.3 LIMITED ENGLISH PROFICIENCY (LEP)**

**Presidential Executive Order 13166** "Improving Access to Services for Persons with Limited English Proficiency" contains two significant components. The first component is designed to improve enforcement and implementation of Title VI obligation to prohibit discrimination based on national origin. The obligation based on national origin includes prohibiting recipients (NYSDOT) and sub-recipients (Sponsors) of federal financial assistance from discriminating against individuals for whom English is not their first language by failing to provide meaningful access to services, programs, and activities for individuals who have LEP.

The second component requires all federal agencies to meet the same standards as federal financial assistance recipients and Sponsors in providing meaningful access for LEP individuals to federally funded programs. Sponsors and the federal government, based on available resources, must provide materials in other languages or interpreters at meetings when individuals have LEP.

Sponsors should consider the following measures to implement LEP strategies:

- Written translation of the Sponsor's vital documents,
- Language Implementation Plan,
- Bilingual staff for translation,
- Language needs assessments or efforts which consider:
  - The number or proportion of LEP persons in the eligible service population,
  - The frequency in which LEP individuals encounter the Sponsor's programs or activities, and
  - The Program's importance, activity, or services provided by the Sponsor.

Outreach materials, including public meetings/hearings and announcements, *must* be available in languages the affected population understands. Public meetings and hearings should be held at both geographically and structurally accessible facilities. Efforts should be made to schedule public meetings and hearings that do not conflict with the impacted communities' work schedules

and should be held in facilities easily accessible by public transportation. Public meetings and hearing announcements should indicate that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP. If requested, spoken and sign language interpreters and alternately formatted materials should be provided at no cost.

**Outreach materials, including public meeting/hearing announcements, must be available in languages the affected population understands.**

## 13.4 ENVIRONMENTAL JUSTICE

**Presidential Executive Order (EO) No. 12898**, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” directs each federal agency to identify and address, as appropriate, disproportionately high, and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. **Title 23 CFR 450** requires States and Metropolitan Planning Organizations to seek out and consider the needs of those traditionally underserved by existing transportation systems, including, but not limited to, low-income and minority households. There are three fundamental environmental justice principles:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic impacts, on minority populations and low-income populations.
2. To ensure all potentially affected communities’ full and fair participation in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority populations and low-income populations.

## 13.5 THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT (ADA)

As amended, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any federally assisted program or activity. **Section 504**, codified in **49 CFR Part 27**, prohibits discrimination based on an individual’s disability in transportation-funded programs, activities, and services receiving or benefiting from federal financial assistance from the USDOT via FHWA.

**The Americans with Disabilities Act (ADA, 1990)** is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life regardless of funding source. **Title II, 28 CFR Part 35** of the ADA pertains explicitly to state and local governments.

Sponsors must implement the following as part of their oversight responsibilities:

- Ensure that all departments are informed of their responsibilities to provide accessibility in their activities, programs, services, and facilities (i.e., department's public rights-of-way).
- Have a designated 504/ADA Coordinator responsible for coordinating Section 504/ADA compliance with all departments.
- Ensure the Sponsor and its sub-recipients apply appropriate accessibility standards to their transportation facilities as defined in NYSDOT's HDM.
- Ensure all complaints filed under Section 504 and/or the ADA are processed following established complaint procedures.
- Ensure that information in electronic format is accessible to people with disabilities.
- Provide public notice of the Sponsor's ADA provisions.
- Conduct self-evaluations.
- Ensure their ADA Transition Plan is in place and updated, as noted in their ADA Transition Plan. See [Section 13.5.3: ADA Transition Plan](#).

**The Sponsor must have a Designated ADA Coordinator .**

### 13.5.1 Nondiscrimination

[Title 49 CFR 27.7](#) requires a Sponsor's programs or activities that receive federal financial assistance when providing aid, benefits, services, activities, and public facilities to be accessible to persons with disabilities. The ADA requires public facilities and programs to be accessible regardless of the funding source. The Act also requires effective communication with persons with disabilities when Sponsors respond to their requests. Communication venues and media (public meetings, announcements, and publicity) must all be accessible. During project development, any public meetings or outreach shall comply with Title 49 requirements.

**Regardless of where the funding comes from, all public facilities and programs must be accessible, per the ADA.**

### 13.5.2 Self-Evaluation

[Title 28 CFR 35.105](#) is the U.S. Department of Justice (USDOJ) Title II regulation that requires public entities, even if they do not receive federal funds, to evaluate their current policies, practices, programs, services, and activities and to make the self-evaluation available for public comment. In addition, the ADA Transition Plan Checklist, which can be found in [Appendix 13-2](#), maybe used for self-evaluations.

[Title 49 CFR 27.11](#) requires recipients (NYSDOT) and subrecipients (Sponsors) to conduct self-evaluations of policies, programs, practices, services, and activities for compliance with the ADA.

**Self-evaluations are critical to improving your agency's processes.**

### 13.5.3 ADA Transition Plan

**Title 28 CFR 35.150(d)(1)** requires “a public entity that employs 50 or more persons” to prepare an ADA Transition Plan identifying non-compliant pedestrian routes and facilities in the municipal Sponsor’s public right-of-way. ADA Transition Plans shall include a plan and schedule for corrective action. Failure to create and maintain an ADA Transition Plan may result in an entity’s ineligibility to receive federal funds.

If a public entity employs fewer than 50 persons, the entity needs to only conduct self-evaluations (see **Section 13.5.2**).

The ADA Transition Plan should include detailed information about the condition of the Sponsor’s pedestrian-accessible route network, a list of the physical barriers that limit accessibility to its programs, activities, or pedestrian facilities, and the schedule to correct any non-compliance; this should include identifying the party responsible for implementing the corrective action to ensure all Sponsor facilities are accessible to individuals with disabilities. The Sponsor shall provide an opportunity for interested persons or organizations to participate in the development of the transition plan and a copy of the plan shall be made available for public inspection. For more information, refer to **28 CFR 35.150(d)(1), (3)(i-iv)**.

The ADA Transition Plan Checklist (found in **Appendix 13-2**), the ADA Transition Plan (found in **Appendix 13-3**), and the ADA Proposed Work Plan and Schedule (found in **Appendix 13-4**, which are fillable forms) were developed to assist Sponsors in implementing their ADA Transition Plans. In addition, Sponsors are strongly encouraged to use the ADA Transition Plan Checklist located in Appendix 13-2 as a guide when preparing their own ADA Transition Plan.

NYSDOT has its own **ADA Transition Plan**, which includes an inventory of sidewalks and curb ramps alongside state-owned transportation infrastructure and a rating for accessibility of each. NYSDOT continues to update this inventory as it completes capital work at these locations and periodically refreshes the statewide list.

NYSDOT may construct sidewalks, curbs, and curb ramps alongside State highways located in Villages (**NYS Highway Law, Article 3, Section 46**), Towns (**NYS Highway Law Section 140**), and Cities (**NYS Highway Law, Article 12-B, Section 349-c**); however, under the statutory provisions granting NYSDOT such authority, respective Villages, Towns, and Cities are responsible for repairing and maintaining sidewalks, curbs, and curb ramps in their respective municipality. Maintenance includes both preventive and corrective maintenance. For further information, consult the applicable Highway Law Sections provided below.

When NYSDOT alters a State highway that provides pedestrian access, NYSDOT must design and construct the State highway in such a manner that a barrier to the usability of the streets by a protected class (individuals with disabilities) is not created or retained. See **28 CFR 35.150**,

**35.151(b), 35.151(i)**. If NYSDOT does not alter the State highway, it remains the municipality's legal responsibility to comply with applicable ADA accessibility requirements.

A Sponsor's ADA Transition Plan shall include a list of locations with physical barriers that limit the accessibility of programs, activities, or services within its jurisdiction, including those identified alongside State highways. However, to ensure a clear understanding of anticipated and upcoming NYSDOT capital work, municipalities should discuss the State inventory and NYSDOT plans with the Regional Local Project Liaison (RLPL).

The Sponsor's completed ADA Transition Plan must be made available for public comment. For more information regarding ADA Transition Plans, contact the RLPL.

### **13.5.4 Design and Construction**

Sponsors must comply with ADA accessibility standards for all facilities they construct, maintain, monitor, or upgrade. Compliance applies to all projects classified as new construction, reconstruction, rehabilitation, resurfacing, or repair, as well as any work undertaken by the Sponsor's forces. Therefore, access to existing and proposed pedestrian facilities in a public right-of-way must be provided. The applicability of design and construction standards is in **Chapter 9** of this manual.

The USDOJ and the FHWA clarified in the **2013 DOJ/DOT Joint Technical Assistance Informal Guidance Document** that "pavement alteration" activities require a Sponsor to address curb ramp compliance and distinguish between "pavement maintenance" activities that do not require such compliance. This guidance further clarifies this requirement stating that whenever a "pavement alteration" is made to a street, roadway, or highway, curb ramps must be provided at locations where curbs or other barriers restrict access to sidewalks or other pedestrian walkways. Examples of "pavement alterations" include:

- additions of new asphalt layers,
- in-place recycling,
- micro-surfacing/thin lift,
- mill and fill overlays,
- open-graded surface courses,
- cape seals,
- resurfacing,
- new construction,
- rehabilitation, and
- reconstruction.

Curb ramps and detectable warnings must be installed before or during the "pavement alteration" project.

Examples of “pavement maintenance” include:

- crack filling and sealing,
- surface sealing,
- chip seals,
- slurry seals,
- fog seals,
- scrub seals,
- joint crack seals,
- dowel bar retrofits,
- spot locations of high-friction surface treatments,
- diamond grinding, or
- pavement patching.

**Structural changes to existing conditions must be clearly documented that they meet ADA standards.**

See [NYS DOT HDM Chapters 2, 7, and 18](#) and the [DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental](#) for additional guidance.

## 13.6 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

[The Federal Aid Highway Act of 1968 \(23 USC 140\(a\) and 23 CFR 230\)](#) ensures nondiscrimination in employment based on race, color, religion, sex, or national origin on any federally aided projects. Sponsors are required to include EEO provisions in all their federal aid construction contracts by physically including Form FHWA 1273, [Required Contract Provisions Federal Aid Construction Contract](#) in the contract proposal. EEO requirements are included in [Appendix 12-1](#), [Chapter 14](#), and [Chapter 15](#).

Sponsors must identify employment goals for each specific contract; see [Chapter 12](#). These goals are included in [Appendix 12-1](#), which is included in the contract proposal. Contractors are required to submit workforce data to Sponsors during the performance of their construction contracts. Employees and work hours must be entered weekly in NYSDOT’s civil rights reporting software [Equitable Business Opportunity \(EBO\)](#). Sponsors must review EBO and compare the EEO Workforce Utilization Report to the certified payroll system. EEO goals and attainments are also monitored by both the RLPL and Sponsor. When the EEO goals are not met, the Contractor must provide Good Faith Effort (GFE) documentation to the Sponsor. GFE are action-oriented steps taken to show that all concrete, tangible, result-oriented efforts were exhausted through all reasonable means to comply with affirmative action hiring of the contract EEO goals.



**Minority and female workforce participation goals must be maintained on a month-to-month basis or GFE needs to be provided.**

## 13.7 APPRENTICESHIP AND TRAINING PROGRAMS

Training is a Civil Rights activity that may address the under-utilization of minorities, females, and economically-disadvantaged persons in highway construction and engineering contracts. The Sponsor must include **Item 691 Training and Apprenticeship Requirements** if the construction cost is estimated above \$5 million. If the construction cost is below \$5 million and there is an opportunity for training, the 691 Training items can be included.

An apprenticeship training program must be registered with the **NYS Department of Labor (NYS DOL)** and approved by NYSDOT. Only FHWA-approved On-the-Job Training programs or **NYS DOL/U.S. Department of Labor (USDOL)** registered apprenticeship programs may be used to fulfill training requirements. The review process and approval process are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate training program activities with their RLPL.

**The training item can be waived if all parties agree that the project has no meaningful and effective training.**

**Per EI 21-014, training requirements may be waived. If the construction cost is below \$5 million, the Sponsor may submit a waiver request, which must be documented in the PS&E submission.**

## 13.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

**Title 49 CFR 26.45** requires NYSDOT to submit a programmatic **DBE Plan** to the USDOT. Therefore, Sponsors must use NYSDOT's approved DBE Plan.

Only firms certified through the New York State Unified Certification Program (NYSUCP) as DBEs may be used to accomplish DBE participation goals set on federal aid contracts. The **NYSUCP DBE Directory** is the sole resource for identifying DBEs. Firms not certified as DBEs may apply for certification online with any of the four Certifying Partners listed on the Directory's home page. NYSDOT's DBE Certification Unit assists with **DBE Certification**. NYSDOT does not pre-qualify nor recommend firms for participation.

**DBE firms must be certified at the time of project award.**



## **13.8.1 DBE Contract Requirements / Establishing DBE Goals**

### **13.8.1.1 Consultant and Professional Services**

#### **13.8.1.1.1 Architectural & Engineering (A&E) Consultant Contracts**

All federally aided A&E consultant contracts must encourage DBE participation. The RLO's Project Manager or designee shall monitor DBE participation as the project progresses. The prime consultant shall report attainment data to the Sponsor each time a payment request is submitted using EBO. For more information about consultant selection procedures, see [LPM Chapter 6](#).

#### **13.8.1.1.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts**

For non-A&E contracts such as real estate, legal, accounting, auditing, and public relations, the Sponsor, in coordination with the RLPL and NYSDOT's Office of Diversity and Opportunity (ODO), will determine the DBE goal during the final stages of drafting the Request for Proposals. This goal is based on the value of the contract, the type of work involved that could be subcontracted, and the availability of DBE to accomplish the work. Payment data shall be reported by the prime consultant to the Sponsor, utilizing the EBO system each time a payment is made.

#### **13.8.1.2 Construction Contracts**

The Sponsor or their designee will ensure that the construction contract includes participation goals in accordance with NYSDOT's current [DBE Program Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. To set the DBE goal, use the following documents:

- Table of Construction Contract Groups,
- Multi-Regional (Market Area) Map,
- Baseline DBE Goal Selection Chart, and
- The assessment portion of the Construction Contract DBE Goal Assessment Form.

These forms and instructions can be found on [NYSDOT's Civil Rights website](#).

### **13.8.2 DBE Goal Assessment Process**

The Sponsor may request a modification of the DBE goal. To implement a modification to the DBE goal to either increase, reduce, or be exempt during final design, the Sponsor is required to complete the DBE Goal Assessment Form. For example, increases might be appropriate for those projects with additional opportunities for DBE participation due to the project's variety of operations or magnitude. Conversely, a reduction or exemption could be sought for projects with no significant DBE participation opportunities, perhaps due to being specialized in nature with few pay items. The Sponsor must submit the [DBE Goal Assessment Form](#) to the RLPL before contract document review and approval, but preferably after authorization of Detailed Design. Refer to [HDM Chapter 21](#), "Contract Plans, Specifications, and Estimates," or [NYSDOT's Civil Rights website](#).

Approved revisions to the DBE goal must be included in the project's advertisement, contract proposal, and contract (see [LPM Chapter 14](#) for guidance).

**A DBE goal assessment must be performed at ADP to ensure the goals are appropriate to the project.**

### 13.8.3 DBE Goal and Good Faith Efforts (GFE) Documentation

The Sponsor or their designee must set the goal, monitor, and report on a contract's DBE participation. If the goal is not met, the Sponsor must collect documentation of good faith efforts demonstrated by the contractor. Further details on setting DBE goals can be found in [LPM Chapter 12](#); details on GFE documentation can be found in [LPM Chapter 14](#) and [LPM Chapter 15](#) and [NYSDOT's MURK Part 1A CAM Section 102-12](#).

Sponsors must work with NYSDOT staff to ensure data and process quality throughout the project delivery and construction processes. In addition, NYSDOT requires civil rights reporting through the EBO software to monitor construction contract payments, DBE goals, DBE commitments, and DBE attainments. Further details on EBO can be found in [LPM Chapter 14](#).

**GFE must show concrete, tangible, result-oriented efforts were taken to meet the goal.**

### 13.8.4 NYS Executive Order 162 Ensuring Pay Equity

[NYS EO 162](#), "Ensuring Pay Equity by State Contractors" issued in January 2017, is intended to help assure State laws are being complied with by requiring contractors and consultants to provide documentation demonstrating whether women are being paid the same salaries as men for work being performed. Refer to [Standard Specifications §107-16](#) and [LPM Chapter 15](#) for more information.

**This reporting requirement applies to every individual who is paid in conjunction with the contract.**

## 13.9 PROMPT PAYMENT

The Sponsor is responsible for ensuring all consultants and contractors comply with the prompt payment contract requirements in [49 CFR 26.29](#). These requirements must be included in the Sponsor's contract specifications. In addition, the Sponsor is responsible for quality control monitoring of prompt payments using EBO, with the RLPL providing quality assurance monitoring and enforcement.

While [49 CFR 26.29](#) requires payment to subcontractors within thirty (30) days, New York State and General Municipal Laws are more stringent. Specifically, [NYS Finance Law Article 9, Section 139-f\(2\)](#), and [NYS General Municipal Law, Article 5-A, Section 106-b\(2\)](#) require prime consultants and contractors to pay their subconsultants/contractors and their various vendors within seven (7) calendar days of receipt of payment from the public owner. Refer to [Standard Specifications 109-07](#) and [LPM Chapter 15](#) for more information.

**The Sponsor may withhold future payment to the Contractor, per their Contract, until prompt payment issues are resolved by the Contractor.**

## **13.10 FEDERAL REPORTING REQUIREMENTS**

Consultants and contractors must submit data to Sponsors using NYSDOT's Civil Rights reporting software, EBO. Sponsors are required to ensure that consultants and contractors submit timely, accurate, and complete data. It enables NYSDOT to submit to the FHWA timely, accurate, and complete federal reports that include all federally aided contracts in New York State. A Sponsor's failure to ensure timely, accurate, and complete reporting of Civil Rights data may result in a loss or delay of federal aid. All data must be entered before final project acceptance by the Sponsor.

## **13.11 CONTRACT COMPLIANCE REVIEWS**

Sponsors must conduct Civil Rights monitoring on all construction contracts. In addition, the Sponsor may be directed to perform a comprehensive construction contract compliance review per **23 CFR 230 Subpart D**. The procedure and forms for the construction contract compliance review process are in **NYSDOT's MURK Part 1A CAM Section 98**.

NYSDOT's ODO annually completes a compliance review of Sponsors who were recipients of federal aid. The ODO analysts will contact the Sponsor via telephone and follow up with a letter. In addition, the appropriate RLPL will be provided with additional information on the review. Compliance Reviews not only cover a specific project but evaluate the Sponsor's internal compliance processes and procedures.

## **13.12 FINAL REPORTS—CONTRACT CLOSE-OUT**

Sponsors must ensure that all required Civil Rights data for federally funded and state-funded projects are in EBO before the State-Local Agreement's close-out. Failure to provide timely, accurate, and complete data may jeopardize reimbursement and future aid.

## **13.13 CIVIL RIGHTS REQUIREMENTS ON STATE-FUNDED (NON-FEDERAL AID) PROJECTS**

### **13.13.1 Minority and Women-Owned Business Enterprises (M/WBE) Program and Service-Disabled Veteran-Owned Business (SDVOB) Program**

The requirements of **New York State Executive Law Article 15-A, Article 3 of the Veteran Services Law**, and the regulations promulgated under **5 NYCRR 140-145** and **9 NYCRR 252.2** apply to all state-funded projects. Sponsors shall comply with these laws, rules, regulations, gubernatorial executive orders, and the **M/WBE** and **SDVOB Program** requirements.

All contracts entered into by the Sponsor in furtherance of state-issued, non-federally aided funds must be assessed to determine appropriate M/WBE/SDVOB goals derived from NYSDOT's Agency M/WBE and SDVOB Goal Plans. For detailed information on goal setting, Goal

Assessment, Good Faith Effort Documentation, and Goal Waiver Requests for M/WBE see [Appendix 13-5](#); for SDVOB, see [Appendix 13-6](#); and for GFE, see [Appendix 13-7](#).

## **13.14 NON-COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS**

By signing the State-Local Agreement, the Sponsor becomes contractually obligated to ensure all federal and state Civil Rights laws, rules, regulations, and federal and state executive orders are adhered to in contracts with its consultants and contractors. Failure by the Sponsor to carry out its responsibilities under and comply with federal and state civil rights requirements may result in a loss of federal or state aid.

## 13.15 REFERENCES, CHAPTER 13.0 CIVIL RIGHTS REQUIREMENTS

TITLE	LINK
<b>FEDERAL LAWS &amp; REGULATIONS</b>	
<b>23 USC § 140(a)</b> , Nondiscrimination	<a href="https://www.govinfo.gov/content/pkg/USCODE-1995-title23/html/USCODE-1995-title23-chap1-sec140.htm">https://www.govinfo.gov/content/pkg/USCODE-1995-title23/html/USCODE-1995-title23-chap1-sec140.htm</a>
<b>42 USC § 2000d</b> , Title VI of the Civil Rights Act	<a href="https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf">https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf</a>
<b>23 CFR § 200.9</b> , State Highway Agency Responsibilities	<a href="https://www.govinfo.gov/content/pkg/CFR-2008-title23-vol1/xml/CFR-2008-title23-vol1-sec200-9.xml">https://www.govinfo.gov/content/pkg/CFR-2008-title23-vol1/xml/CFR-2008-title23-vol1-sec200-9.xml</a>
<b>23 CFR § 230</b> , External Federal Highway Programs	<a href="https://www.govinfo.gov/content/pkg/CFR-1999-title23-vol1/xml/CFR-1999-title23-vol1-part230.xml">https://www.govinfo.gov/content/pkg/CFR-1999-title23-vol1/xml/CFR-1999-title23-vol1-part230.xml</a>
<b>23 CFR § 230.111</b> , Implementation of Special Requirements for the Provision of On-the-Job Training	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec230-111.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec230-111.xml</a>
<b>23 CFR § 450</b> , Planning Assistance and Standards	<a href="https://www.govinfo.gov/content/pkg/CFR-2004-title23-vol1/xml/CFR-2004-title23-vol1-part450.xml">https://www.govinfo.gov/content/pkg/CFR-2004-title23-vol1/xml/CFR-2004-title23-vol1-part450.xml</a>
<b>28 CFR § 35.105</b> , Self-evaluation	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title28-vol1/xml/CFR-2011-title28-vol1-sec35-105.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title28-vol1/xml/CFR-2011-title28-vol1-sec35-105.xml</a>
<b>28 CFR § 35.150(d)(1)</b> , Transition Plan	<a href="https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-150.xml">https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-150.xml</a>
<b>28 CFR § 35.151</b> , New Construction & Alterations	<a href="https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-151.xml">https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-151.xml</a>
<b>49 CFR § 26</b> , Disadvantaged Business Enterprises (DBE)	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml</a>
<b>49 CFR § 26.29</b> , What prompt payment mechanisms must recipients have?	<a href="https://www.govinfo.gov/content/pkg/CFR-1999-title49-vol1/xml/CFR-1999-title49-vol1-sec26-29.xml">https://www.govinfo.gov/content/pkg/CFR-1999-title49-vol1/xml/CFR-1999-title49-vol1-sec26-29.xml</a>
<b>49 CFR § 26.45</b> , How do recipients set overall goals?	<a href="https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/xml/CFR-2009-title49-vol1-sec26-45.xml">https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/xml/CFR-2009-title49-vol1-sec26-45.xml</a>
<b>49 CFR § 27.7</b> , Discrimination Prohibited	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-sec27-7.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-sec27-7.xml</a>
<b>49 CFR § 27.11</b> , Remedial and Voluntary Actions and Compliance Planning	<a href="https://www.govinfo.gov/content/pkg/CFR-1998-title49-vol1/xml/CFR-1998-title49-vol1-sec27-11.xml">https://www.govinfo.gov/content/pkg/CFR-1998-title49-vol1/xml/CFR-1998-title49-vol1-sec27-11.xml</a>

TITLE	LINK
<b>Title VI of the Civil Rights Act of 1964</b>	<a href="https://www.fhwa.dot.gov/civilrights/programs/title_vi">https://www.fhwa.dot.gov/civilrights/programs/title_vi</a>
<b>FEDERAL LAWS &amp; REGULATIONS</b>	
<b>The Federal Aid Highway Act of 1968</b>	<a href="https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg815.pdf">https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg815.pdf</a>
<b>Section 504 of the 1973 Rehabilitation Act</b>	<a href="https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973">https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973</a>
<b>Americans with Disabilities Act of 1990 (ADA)</b>	<a href="https://www.ada.gov/ada_intro.htm">https://www.ada.gov/ada_intro.htm</a>
<b>Presidential Executive Order (EO) 12898</b>	<a href="https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice">https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice</a>
<b>Presidential Executive Order (EO) 13166</b>	<a href="https://www.justice.gov/crt/executive-order-13166">https://www.justice.gov/crt/executive-order-13166</a>
<b>STATE LAWS &amp; REGULATIONS</b>	
<b>5 NYCRR 140-145, M/WBE Program</b>	<a href="https://cdn.esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REGS.pdf">https://cdn.esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REGS.pdf</a>
<b>9 NYCRR 252.2, SDVOB Program</b>	<a href="https://govt.westlaw.com/nycrr/Document/Ie8529745221211e4a6bf0000845b8d3e?listSource=Search&amp;contextData=%28sc_Search%29&amp;list=NYREGULATION_PUBLICVIEW&amp;rank=5&amp;transitionType=Default">https://govt.westlaw.com/nycrr/Document/Ie8529745221211e4a6bf0000845b8d3e?listSource=Search&amp;contextData=%28sc_Search%29&amp;list=NYREGULATION_PUBLICVIEW&amp;rank=5&amp;transitionType=Default</a>
<b>Veteran services Law Article 3, SDVOB</b>	<a href="https://law.justia.com/codes/new-york/2022/vet/article-3/">https://law.justia.com/codes/new-york/2022/vet/article-3/</a>
<b>NYS Executive Law Article 17-B, SDVOB Program</b>	<a href="https://portal.nysesda.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004FykREAS">https://portal.nysesda.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004FykREAS</a>
<b>NYS Executive Order 162, Ensuring Pay Equity</b>	<a href="https://www.governor.ny.gov/sites/default/files/atoms/files/EO_162.pdf">https://www.governor.ny.gov/sites/default/files/atoms/files/EO_162.pdf</a>
<b>NYS Highway Law, Article 3, § 46, State Highways in Villages</b>	<a href="https://www.nysenate.gov/legislation/laws/HAY/46">https://www.nysenate.gov/legislation/laws/HAY/46</a>
<b>NYS Highway Law, Article 3 § 140, State Highways in Towns</b>	<a href="https://codes.findlaw.com/ny/highway-law/hay-sect-140.html">https://codes.findlaw.com/ny/highway-law/hay-sect-140.html</a>
<b>NYS Highway Law, Article 12-B, § 349-C, State Highways in Cities</b>	<a href="https://www.nysenate.gov/legislation/laws/HAY/349-C">https://www.nysenate.gov/legislation/laws/HAY/349-C</a>
<b>NYS Finance Law, Article 9, § 139-f(2), Payment on Public Work Projects</b>	<a href="#">Legislation   NY State Senate (nysenate.gov)</a>

TITLE	LINK
<b>NYS General Municipal Law, Article 5-A, Section 106-b</b> , Payment on Public Works Projects	<a href="https://www.nysenate.gov/legislation/laws/GMU/106-B">https://www.nysenate.gov/legislation/laws/GMU/106-B</a>
<b>NYSDOT POLICIES, PROCEDURES, &amp; GUIDANCE</b>	
<b>ADA Transition Plan</b>	<a href="https://www.dot.ny.gov/programs/adamanagement/ada-transition-plan">https://www.dot.ny.gov/programs/adamanagement/ada-transition-plan</a>
<b>DBE Certification Program</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification">https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification</a>
<b>NYSDOT Contract Administration Manual, Section 98</b>	<a href="https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a">https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a</a>
<b>NYSDOT Standard Specifications</b>	<a href="https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc/usc-repository/2022_1_specs_usc_vol1.pdf">https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc/usc-repository/2022_1_specs_usc_vol1.pdf</a>
<b>NYSDOT Highway Design Manual, Chapter 21</b>	<a href="https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21">https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21</a>
<b>NYSDOT DBE Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/DBE%20Program%20Plan%202019%20Final%20%20121719.pdf">https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/DBE%20Program%20Plan%202019%20Final%20%20121719.pdf</a>
<b>NYSDOT's M/WBE Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program">https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program</a>
<b>NYSDOT's SDVOB Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program">https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program</a>
<b>NYSDOT Title VI Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej">https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej</a>
<b>NYSDOT Engineering Instruction, EI 21-014</b>	<a href="https://www.dot.ny.gov/portal/pls/portal/mexis_app.pa.ei.eb_admin_app.show_pdf?id=13988">https://www.dot.ny.gov/portal/pls/portal/mexis_app.pa.ei.eb_admin_app.show_pdf?id=13988</a>
<b>Title VI Nondiscrimination Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej">https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej</a>
<b>ADDITIONAL RESOURCES</b>	
<b>DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental</b>	<a href="https://www.ada.gov/doj-fhwa-ta-supplement-2015.html">https://www.ada.gov/doj-fhwa-ta-supplement-2015.html</a>
<b>The NYSUCP DBE Directory</b>	<a href="https://nysucp.newnycontracts.com/">https://nysucp.newnycontracts.com/</a>

New York State  
Department of Transportation  
**Local Projects Manual**

**Chapter 13**  
**Civil Rights Requirements**  
**APPENDICES**





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## Appendix 13-1: Standard Title VI/Non-Discrimination Assurances

The **Municipality** (herein referred to as the "Municipality"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the US Department of Transportation (DOT), through the **New York State Department of Transportation (NYSDOT)**, is subject to and will comply with the following:

### Statutory/Regulatory Authorities

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, or national origin).

- 49 CFR Part 21 (entitled Nondiscrimination In Federally Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act Of 1964.)
- 28 CFR Section 50.3 (US Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

### General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policies, memoranda, and/or guidance, the Municipality hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the NYSDOT."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

## Specific Assurances

More specifically, and without limiting the above general assurances, the Municipality agrees with and gives the following Assurances with respect to its Federally assisted (Name of Appropriate Program):

1. The Municipality agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Municipality will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all (**Insert Name of Appropriate Program**) and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The **Municipality**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Municipality will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Municipality will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Municipality.
5. The Municipality receives Federal financial assistance to construct a facility or part of a facility; the assurance will extend to the entire facility and facilities operated in connection therewith.
6. Where the Municipality receives Federal financial assistance in the form of the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
7. The Municipality will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Municipality with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and,

- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. This Assurance obligates the Municipality for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the Municipality or any transferee for the longer of the following periods:
  - a. The period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits; or
  - b. The period during which the Municipality retains ownership or possession of the property.
9. The Municipality will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Municipality agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the **Municipality** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the NYSDOT's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews and/or complaint investigations conducted by NYSDOT. You must keep records, and reports and submit the material for review upon request to NYSDOT or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements prescribed by law or detailed in program guidance.

The **Municipality** gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the US Department of Transportation under the **(Insert Name of Appropriate Program)**. This ASSURANCE is binding on the **Municipality**, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, and their subcontractors, transferees, successors in interest, and any other participants in the **(Insert Name of Appropriate Program)**. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Municipality.







Executive Committee for Affirmative Action to ensure that agencies develop and implement effective affirmative action plans.

- **Executive Order 162** – assures that State laws are being complied with by requiring contractors and consultants to provide documentation demonstrating whether women are being paid the same salaries as men for work being performed.

## Federal Laws and Executive Orders

- **Civil Rights Act of 1964** – Prevents discrimination in federally assisted programs; provides relief against discrimination in public accommodations; protects constitutional rights in public facilities and public education; enforces the constitutional right to vote. Title VI – prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. Title VII, as amended by the Equal Employment Opportunity Act of 1972 – Makes it unlawful to discriminate in employment practices on the basis of race, color, religion, sex, or national origin.
- **Section 503 of the Rehabilitation Act of 1973** – Prohibits discrimination on the basis of physical or mental disability in every federally assisted program or activity in the country.
- **Age Discrimination Act of 1975** – Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- **Civil Rights Restoration Act of 1988** – Specifies that recipients of federal funds must comply with civil rights laws in all areas, not just in a program or activity that receives federal funding. It applies to all federal laws.
- **Americans with Disabilities Act (ADA) of 1990** – Federal Law prohibiting discrimination against people with disabilities in employment, public access to services, transportation, public accommodations, and telecommunications services.
- **Civil Rights Act of 1991** – Provides appropriate remedies for intentional discrimination and unlawful harassment in the workplace; codifies the concepts of "business necessity" and "job-related," confirms statutory authority, and provides statutory guidelines for the adjudication of disparate impact suits under Title VII of the Civil Rights Act of 1964; expands the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination. The Act provides compensatory and punitive damages and jury trials in sex, religion, and disability bias cases.
- **Executive Order No. 162** – Ensures fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- **Executive Order No. 11246** – Prohibits contractors and sub-contractors doing business with the Federal Government from discriminating in employment because of race, color, religion, or national origin. Employers are required to take affirmative action in employment activities, including hiring, promotion, transfers, training, and minorities and women.





6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Municipality, or the **(Insert Title of Modal Operating Administration)** may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided that if the contractor becomes involved in or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request **the Municipality** enter into such litigation to protect the interests of the **the Municipality** and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## Appendix 13-1: APPENDIX B, Clauses for Deeds Transferring United Property

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the US Department of Transportation as authorized by law and upon the condition that the **Municipality** will accept title to the lands and maintain the project constructed thereon in accordance with **(Insert Name of Appropriate Legislative Authority)**, the Regulations for the Administration of **(Insert Name of Appropriate Program)**, and the policies and procedures prescribed by the **(Insert Title of Modal Operating Administration)** of the US Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the US Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Municipality** all the right, title and interest of the US Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the **Municipality** and its successors forever, subject, however, to the covenants, conditions, restrictions, and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Municipality**, its successors and assigns.

The **Municipality**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed, and (2) that the **Municipality** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in federally-assisted programs of the US Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the US Department of Transportation and its assigns as such interest existed prior to this instruction].\*

*(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to clarify the purpose of Title VI.)*

## Appendix 13-1: APPENDIX C, Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Municipality** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event, facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a US Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of a breach of any of the above Nondiscrimination covenants, *the Municipality* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
- C. With respect to a deed, in the event of a breach of any of the above Nondiscrimination covenants, the **Municipality** will have the right to enter or re-enter the lands and facilities thereon. The above-described lands and facilities will thereupon revert to and vest in and become the absolute property of the **(Insert Title of Recipient)** and its assigns. \*

*(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to clarify the purpose of Title VI.)*





## Appendix 13-1: APPENDIX E, Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

### Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, or national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects),
- Federal-Aid Highway Act of 1973, (23 USC § 324 *et seq.*), (prohibits discrimination on the basis of sex),
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27,
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age),
- Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex),
- The Civil Rights Restoration Act of 1987 (PL 100-259) (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights 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, sub-recipients, and contractors, whether such programs or activities are Federally funded or not),
- Titles II and III of the Americans with Disabilities Act, prohibit discrimination on 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 §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38.
- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, creed, color, national origin, and sex),
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations,
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, provides that national origin discrimination includes discrimination based on an individual's limited English

proficiency (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),

- AS AMENDED, Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs or activities (20 USC 1681 et seq).

# Appendix 13-1: Limited English Proficiency (LEP) Plan

**NAME OF MUNICIPALITY**

*Optional: Attach Organization Seal or Logo Here*

---

*(Print Name)*

**Signed by:** \_\_\_\_\_

**(Select Official)**

**Date:**

**E-Mail Address:**

**Telephone Number:**



## Meaningful Access: Four-Factor Analysis

### 1. The number or proportion of LEP persons in the service area who may be served or are likely to require *Municipality* services

The *Municipality* staff reviewed the American Community Survey 5-Year Estimates for New York State and determined that:

- a. \_\_\_\_\_ individuals in *Municipality* service area comprising \_\_\_\_\_% of the population] speak a language other than English,
- b. Of those, \_\_\_\_\_ individuals have limited English proficiency; that is, they speak English less than "very well" or "not at all." It is only \_\_\_\_\_% of the overall population in the service area,
- c. In the (Insert Name of Municipality)service area, of those persons with limited English proficiency:
  - \_\_\_\_\_% speak German
  - \_\_\_\_\_% speak Spanish
  - \_\_\_\_\_% speak African languages
  - \_\_\_\_\_% speak Chinese
  - \_\_\_\_\_% speak Serbo-Croatian
  - \_\_\_\_\_% speak Scandinavian
  - \_\_\_\_\_% speak Japanese
  - \_\_\_\_\_% speak Russian
  - \_\_\_\_\_% speak other Indic languages
  - \_\_\_\_\_% speak Vietnamese
  - \_\_\_\_\_% speak French
  - \_\_\_\_\_% speak Tagalog
  - \_\_\_\_\_% speak other Slavic languages
  - \_\_\_\_\_% speak Arabic, Indo-European languages
  - \_\_\_\_\_% speak Native North American Languages

- \_\_\_\_\_ % speak Korean
- \_\_\_\_\_ % speak Haitian Creole
- \_\_\_\_\_ % speak Italian
- \_\_\_\_\_ % speak Bengali
- \_\_\_\_\_ % speak Polish
- \_\_\_\_\_ % speak Yiddish
- \_\_\_\_\_ % speak all other languages

**2. The frequency with which LEP persons come in contact with the *Municipality* services**

The *Municipality* reviewed the frequency with which their staff has, or potentially has, contact with LEP persons. It includes documenting phone inquiries or office visits.

- a. To date, the *Municipality* has had \_\_\_\_\_ requests for interpreters and \_\_\_\_\_ requests for translated program documents as follows: (Provide details here)  
OR
- b. The *Municipality* and other staff have had minimal contact with LEP persons.

**3. The nature and importance of services provided by the *Municipality* to the LEP population**

- a. There is no large geographic concentration of any LEP individuals in the service area of *Municipality*. The overwhelming majority of the population, \_\_\_\_\_%, speaks only English. As a result, few social, service, or professional and leadership organizations within the *Municipality* service area focus on outreach to LEP individuals.
- b. The *Municipality* (Insert Department Name) staff is most likely to encounter LEP individuals through office visits, phone conversations, notifications from department staff regarding the results of service delivery, and attendance and participation at public meetings.

**4. The resources available to the *Municipality* and overall cost to provide LEP assistance**

The *Municipality* reviewed its available resources that could be used to provide LEP assistance and inventoried its documents to determine which are suitable for

translation if the need arises.

The **Municipality** contacted local citizens and organizations willing to provide voluntary language translation and interpretation services if needed within a reasonable time period. Other language translation options could be provided by bilingual staff or by telephone from a professional interpretation service for which the **Municipality** would pay a fee.

## LANGUAGE ASSISTANCE

A person who does not speak English as their primary language and has a limited ability to read, write, speak, or understand English may be a Limited English Proficient person and may be eligible for language assistance with respect to **Municipality** services. Language assistance can include interpretation (that means oral or spoken transfer of a message from one language into another) and translation (the written transfer of a message from one language into another).

The **Municipality's** staff can identify an LEP person in need of language assistance by:

- Posting notices of the LEP Plan and the availability of interpretation or translation services free of charge in languages LEP persons would understand.
- Providing **Municipality** staff with language identification cards to identify the language interpretation services needed if the occasion arises.
- Periodically surveying **Municipality**, staff regarding their interaction with LEP persons during the previous period (e.g., quarterly, semi-annually, and annually).
- Greeting participants at the **Municipality**-sponsored informational meeting or event. Conversational interaction with participants can help determine LEP needs for future events.

### Language Assistance Measures

Although there is a very low percentage of LEP individuals in the **Municipality** service area (i.e., persons who speak English less than "very well" or "not at all,") the **Municipality** will take the following actions:

1. The **Municipality** staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating in English.
2. The following resources will be available to accommodate LEP persons:
  - Volunteer Spanish language interpreters will be provided within a reasonable time.
  - Language interpretation services for all other languages will be accessed through a professional telephone interpretation service.

## STAFF TRAINING

The information below will be disseminated to staff. Training opportunities on these topics also will be provided:



- Title VI Policy and LEP responsibilities
- Description of language assistance services offered to the public
- Proper use of interpreter service provider's language identification cards
- Documentation of language assistance requests
- Handling of Title VI/LEP complaints

All contractors or subcontractors performing work for the **Municipality** must follow the Title VI/LEP guidelines.

## TRANSLATION OF DOCUMENTS

The **Municipality** weighed the cost and benefits of translating documents for potential LEP groups. Considering the expense of translating documents, the likelihood of frequent changes in documents, and other relevant factors, the **Municipality** has determined that it is an unreasonable burden to translate documents at this time.

Due to the very small LEP population, the **Municipality** does not have a formal outreach procedure. \_\_\_\_\_ [Enter year here]. Translation resources have been identified and are limited in this region. However, if the need arises to conduct outreach to LEP individuals, the **Municipality** will consider the following options:

- When staff prepares documents or schedules public meetings whose audience is expected to include LEP individuals, the **Municipality** will provide meeting notices, flyers, and agendas in the appropriate non-English language(s).
- **Municipality** will assess requests to translate documents based on the potential effect and known LEP population.

## MONITORING

Monitoring and Updating the LEP Plan – The **Municipality** will update the LEP Plan as required. The plan will be reviewed and updated at a minimum when recent data from the US Census and the American Community Survey are available or when higher concentrations of LEP individuals are present in the **Municipality** service area. Updates to the LEP Plan will include the following:

- The number of documented LEP contacts encountered annually.
- How the needs of LEP persons have been addressed?
- Determination of the current LEP population in the service area (census data, surveys, information from community-based organizations, and other sources).
- Determination as to whether the need for translation services has changed.
- Determination of the effectiveness of language assistance efforts.
- Determination of the adequacy of the **Municipality's** financial resources to fund language assistance resources.

- Determination of the **Municipality's** full compliance with the goals of the LEP Plan.
- Determination of the **Municipality** processing of LEP complaints.

## **DISSEMINATION OF THE (Insert Name of Municipality) LEP PLAN**

Choose from below the actions that **Municipality** will take:

- Post signs in **Municipality** public areas informing LEP persons of the LEP Plan and how to access language services.
- Notify LEP persons of the availability upon request of documents in other languages. This should be placed on agendas and public notices and in the language that LEP persons would understand.
- On the **Municipality** website, post the LEP Plan and procedure to access language services.
- Prepare and post Press Release in non-English languages as necessary.
- Distribute copies of press releases to advocacy groups and other organizations serving LEP populations.

# APPENDIX 13-2

## ADA TRANSITION PLAN CHECKLIST

THE (MUNICIPALITY TYPE)  
OF (NAME OF MUNICIPALITY) (**Sponsor**)

## Appendix 13-2: ADA Transition Plan Checklist

<p>Sponsor:</p> <p>_____</p> <p>Responsible Local Official (RLO):</p> <p>_____</p> <p>Title of RLO:</p> <p>_____</p> <p>Telephone</p> <p>_____</p> <p>Email Address:</p> <p>_____</p> <p>Date:</p> <p>__ / __ / _____</p> <p><input type="checkbox"/> Federal Aid Project   <input type="checkbox"/> Non-Federal Aid Project</p>	<p>ADA Coordinator:</p> <p>_____</p> <p>Title II Coordinator</p> <p>_____</p> <p>Section 504 Coordinator:</p> <p>_____</p> <p>Self-Evaluation Plan Manager:</p> <p>_____</p> <p>ADA Transition Plan Manager:</p> <p>_____</p>
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### Sponsors Responsibilities

This section aims to determine the range of types of facilities/assets the Sponsor is responsible for.

<input type="checkbox"/> Highways	<input type="checkbox"/> Bus Transit Systems	<input type="checkbox"/> Airports
<input type="checkbox"/> Rest Areas	<input type="checkbox"/> Bus Stops	<input type="checkbox"/> Ports and Harbors
<input type="checkbox"/> Welcome Areas	<input type="checkbox"/> Van Transit Systems	<input type="checkbox"/> Pipelines
<input type="checkbox"/> Scenic Overlooks	<input type="checkbox"/> Rail Transit Systems	<input type="checkbox"/> Waterways
<input type="checkbox"/> Recreation Areas	<input type="checkbox"/> Public Safety Facilities	<input type="checkbox"/> Others
<input type="checkbox"/> Office Building	<input type="checkbox"/> Railways	
<input type="checkbox"/> Maintenance Facilities	<input type="checkbox"/> Ferries	

## Identification of Deficiencies

This section aims to discuss what facilities the Sponsor is typically dealing with and some common deficiencies.

What Type of Facilities are you dealing with?			
<input type="checkbox"/>	Sidewalks	<input type="checkbox"/>	Crosswalks
<input type="checkbox"/>	Curb Ramps	<input type="checkbox"/>	Ramps
<input type="checkbox"/>	Curb Cuts	<input type="checkbox"/>	Medians
<input type="checkbox"/>	Driveway Crossings	<input type="checkbox"/>	Bus Stops
Clear Width and Other Dimensions:		Grade:	
<input type="checkbox"/>	Narrow	<input type="checkbox"/>	Below Guidelines
		<input type="checkbox"/>	Steepness
		<input type="checkbox"/>	Angle Points
Cross Slope:		Materials and Finishes:	
<input type="checkbox"/>	Steepness	<input type="checkbox"/>	Deterioration
<input type="checkbox"/>	Irregularity	<input type="checkbox"/>	Inappropriateness
<input type="checkbox"/>	Variability		
Discontinuities:		Lighting:	
<input type="checkbox"/>	Missing Sections	<input type="checkbox"/>	Missing
<input type="checkbox"/>	Gaps	<input type="checkbox"/>	Not Operating
<input type="checkbox"/>	Drops	<input type="checkbox"/>	Inadequate Levels
Obstructions:		Detectable Warning Systems:	
<input type="checkbox"/>	Signs	<input type="checkbox"/>	Missing
<input type="checkbox"/>	Fire Hydrants	<input type="checkbox"/>	Inappropriate Materials
<input type="checkbox"/>	Lights	<input type="checkbox"/>	Inadequate Size
<input type="checkbox"/>	Newspaper Boxes	<input type="checkbox"/>	Wrong Location
<input type="checkbox"/>	Standing Water		
<input type="checkbox"/>	Drainage Structure		
<input type="checkbox"/>	Mailboxes		
Traffic Signal Systems:		Maintenance and Services:	
<input type="checkbox"/>	Inadequate Time Allowed	<input type="checkbox"/>	Snow Removal
<input type="checkbox"/>	Inaccessible Buttons	<input type="checkbox"/>	Debris Clean Up
<input type="checkbox"/>	Inoperable Buttons	<input type="checkbox"/>	Trash Cans
<input type="checkbox"/>	Lack of Visually Impaired Provisions	<input type="checkbox"/>	Recyclable Material Bins
Access Through Work Zones		Other	

## Designs and Cost Estimates for Improvement

The improvements needed to correct deficiencies must be defined through a design and cost estimating process. The goal of this section is to discuss the Sponsor's approach to doing this.

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Have your design standards been reviewed concerning accessibility issues?
<input type="checkbox"/>	<input type="checkbox"/>	Do you have in-house design capacity concerning accessibility issues?
<input type="checkbox"/>	<input type="checkbox"/>	Are design consultants needed?
What cost estimating resources do you rely on for accessibility improvements?		
What escalation factors are you applying to accessibility improvements?		

## Prioritization of Improvements

A priority ranking for approaching the defined improvements must be worked out to establish an effective schedule. This section aims to discuss the methods used to rank the upgrades in order of priority.

What is the approach to prioritizing improvements?			
<input type="checkbox"/>	Population density in the area	<input type="checkbox"/>	Hospitals
<input type="checkbox"/>	Significant disabled population within the area	<input type="checkbox"/>	Places of Employment
<input type="checkbox"/>	Proximity to key locations	<input type="checkbox"/>	Shopping Areas
<input type="checkbox"/>	Government offices	<input type="checkbox"/>	The severity of the deficiency
<input type="checkbox"/>	Schools		
Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Is a review complaint a factor?	
<input type="checkbox"/>	<input type="checkbox"/>	Is public demand a factor?	

## Prioritization of Improvements

What are the sources of public demand?		
<b>Yes</b>	<b>No</b>	
<input type="checkbox"/>	<input type="checkbox"/>	Is compatibility with the available budget a factor?
How are the available budget and the improvement needs matched?		

## Management Approach to Implementation

This section explains how the Sponsor manages the transition plan's development and carries out the improvements. The plan's development may be a time-intensive effort but tracking the implementation of the upgrades will be a less severe long-time assignment.

What is the approach to prioritizing improvements?
Who is the Responsible (RLO) in charge of the implementation of the Transition Plan?
Who is the ADA Transition Coordinator?
Is there an internal committee that provides input into the Transition Plan Process?
Has any staff been assigned to the Transition Plan Process?
How many staff persons?
In what capacity?
In what Department does the responsibility for the Transition Plan reside?
What training courses about accessibility have the staff gone through?
What reference works about accessibility do you find useful?
Who has the responsibility for Transition Plan updates?
Have any consultants been contacted relative to Transition Plan work?

## Funding Mechanisms

There is no specific funding mechanism related to the improvement of accessibility deficiencies. Funding might come from many different sources. The goal of this section is to explore the funding experience of the Sponsor.

Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Have accessibility improvements been incorporated into existing programmed projects?	
<input type="checkbox"/>	<input type="checkbox"/>	Has any cost differential been recognized?	
<input type="checkbox"/>	<input type="checkbox"/>	Have stand-alone accessibility improvement projects been processed through the Transportation Improvement Program?	
What sources have provided funding for accessibility improvement programs:			
<input type="checkbox"/>	National Highway System Program		<input type="checkbox"/>
<input type="checkbox"/>	Surface Transportation Program		<input type="checkbox"/>
<input type="checkbox"/>	Highway safety Improvements Program		<input type="checkbox"/>
<input type="checkbox"/>	Railway-Highway Crossing Program		<input type="checkbox"/>
<input type="checkbox"/>	Transportation Alternatives Program		<input type="checkbox"/>
<input type="checkbox"/>			<input type="checkbox"/>
<input type="checkbox"/>	Congestion Mitigation/Air Quality Program		<input type="checkbox"/>
<input type="checkbox"/>	Recreational Trails Program		<input type="checkbox"/>
<input type="checkbox"/>	State and Community Traffic Safety Program		<input type="checkbox"/>
<input type="checkbox"/>	Other Programs		<input type="checkbox"/>
Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Have accessibility improvements been included in developer impact fees?	





## Promulgation and Feedback

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Any recommendations, unique, unusual, or unfinished (e.g., ROW Projections, permits, funding shortfalls, etc.) to be noted in the "Notice to Proceed with Award" Letter:

### Unique Situations

Regional Reviewer	Concern/Situation	Resolution/Date



## Appendix 13-3: AMERICANS WITH DISABILITIES ACT (ADA) TRANSITION PLAN

### ADA Transition Plan

This ADA Transition Plan reflects **Municipality** herein referred to as the (“Municipality”), long-term commitment to ADA compliance and details the stages of **Municipality** plan and the timeline for (1) evaluating accessibility by identifying any structural barriers associated with public facilities; (2) identifying accommodations and/or modifications that can be provided to make programs and services accessible, and (3) prioritizing the remediation of any deficiencies and formulating a budget and schedule for those improvements.

This Draft ADA Transition Plan will be revised and updated as the steps of the Plan are completed.

### Introduction

ADA regulations prohibit discrimination against individuals on the basis of disability and require state and local governments to make their programs and services accessible to persons with disabilities. These requirements focus on providing accessibility by addressing and eliminating structural barriers associated with public facilities.

As detailed below, **Municipality** has made a significant and long-term commitment to improving the accessibility of its public facilities. The purpose of this Plan is to ensure that **Municipality** identifies prohibited structural barriers to its public facilities and, where structurally feasible, schedules and implements ADA-required improvements in order to remove those barriers.

The ADA requires that the Transition Plan include the following components:

1. Identification of physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities,
2. Identification of the methods to be used to remove any barriers limiting accessibility,
3. A schedule for completion of the necessary steps to achieve accessibility in public facilities, and
4. The Name of the public entity's ADA Coordinator.

### STEP 1: IDENTIFICATION OF PHYSICAL BARRIERS IN THE NAME OF THE MUNICIPALITY'S FACILITIES

The first phase of the ADA Transition Plan is to evaluate the **Municipality's** public facilities for accessibility. Officials from Planning, Public Works, and Human Resources Departments will coordinate to conduct accessibility evaluations of the following facilities:

- Sidewalks, crosswalks, and curb ramps
- Publicly accessible buildings

- Parking lots serving publicly accessible buildings

A Survey of the **Municipality's** Public Facilities ("the Survey") will be completed for each facility evaluated. Any deficiencies suggested improvements and observations relating to structural feasibility of improvements will be noted and recorded on the Survey. An Inventory of Public Facilities ("the Inventory") will also be created and will serve as the central database for identified structural barriers, suggested improvements, and comments relating to structural feasibility of improvements.

### Evaluation of Sidewalks, Crosswalks, and Curb Ramps

The Survey will contain the following ratings to assess the condition of each **Municipality** sidewalk, crosswalk, and curb ramp:

- **Rating 1** – Not Applicable: A facility not considered to require accessibility, for example, limited-access highways.
- **Rating 2** – Not Accessible: Significant discontinuity such as steps, no ramps, more than 100 feet of unpaved walkway, heaving, vertical displacement, other severe distress, flooding, etc.
- **Rating 3** – Partially Accessible: Not designed to current standards, problems with geometry of sidewalks, ramps, and landings, no detectable warnings, handrails, etc.
- **Rating 4** – Accessible: May need additional improvements, for example, circuitous routes, insufficient width, etc.
- **Rating 5** – Fully Accessible: Designed to current standards, but reasonable accommodations may still be required for individual cases.

### Evaluation of Parking Lots and Publicly Accessible Buildings

To evaluate publicly accessible buildings and the parking lots serving those buildings, the Survey will incorporate relevant portions of the ADA Checklist (Appendix 13-2) for Existing Facilities (based on the [2010 ADA Standards for Accessible Design](#)), produced by the Institute for Human-Centered Design.

### Schedule for Completion

**Municipality** officials from its Planning, Public Works, and Human Resources Departments will be coordinating over the next several months to evaluate public buildings, parking lots, sidewalks, crosswalks, and curb ramps. Numerous facilities will be subject to this evaluation, and consequently, this will be a substantial undertaking for the reviewing officials. The evaluations will be scheduled to evaluate outdoor facilities prior to the winter months (to avoid snow cover that may impede a thorough review), with any remaining evaluations of outdoor facilities to be completed to **provide a projected date for completion**. Evaluations of indoor facilities will continue during the winter months. Therefore, it is estimated that Step 1 will be completed by **provide estimated completion date**.

## STEP 2: IDENTIFICATION OF METHODS TO REMOVE BARRIERS

The second phase of the **Municipality** ADA Transition Plan is to develop a method to remove barriers. This includes identifying the nature of needed improvements, determining the structural feasibility of improvements under the ADA standards, and prioritizing necessary improvements.

Once the necessary improvements have been identified and prioritized, this information, along with a list of any improvements determined to be physically unfeasible, will be presented at a public meeting of the **Municipality's** Compliance Committee. The **Municipality's** practice provides public notice of the dates and agendas of Compliance Committee meetings on the **Municipality's** website. It will provide the public with an opportunity to participate in the formulation of the ADA Transition Plan.

### Nature of Improvements and Structural Feasibility

The necessary improvements will be determined during Step 1 – the accessibility evaluation of **the Municipality facilities** – and incorporated into the ADA Transition Plan after completing Step 1. Any improvements that **Name of Agency** officials determine are not structurally feasible based on ADA regulations will also be incorporated into the Plan.

### Priority of Improvements

#### **Sidewalks; Crosswalks; Curb Ramps**

With respect to sidewalks, crosswalks, and curb ramps, this ADA Transition Plan's primary focus is to address all ADA noncompliant facilities, defined as locations with a rating of "2" and "3" on the scale discussed above.

The priority of improvements to these facilities will be as follows:

1. Those serving publicly accessible **Municipality** facilities,
2. Those serving commercial and employment centers, and
3. Those serving other areas.

#### **Parking Lots and Publicly Accessible Buildings**

The priority of improvements to parking lots and publicly accessible spaces in **Municipality** buildings will be based on the severity of the accessibility barrier and the frequency of public presence at the facility. Notably, the general assessment of the **Municipality** Code Enforcement Officer is that **Municipality** facilities where public meetings take place are in substantial compliance with the ADA. All new construction or renovations to existing facilities have complied with ADA standards. As such, the **Municipality** does not expect that its publicly accessible buildings and parking lots will require major structural improvements.

### STEP 3: SCHEDULE FOR COMPLETION OF NECESSARY IMPROVEMENTS

Once the Inventory of Public Facilities has been completed and necessary improvements have been prioritized as provided above, the **Municipality** will formulate an estimated budget for the improvements. The schedule for improvements will depend heavily upon the number and severity of the deficiencies identified during the accessibility evaluation and the costs associated with the improvements. However, the **Municipality** reiterates its commitment to making its public facilities accessible to all persons, regardless of disability. The **Municipality's** ADA Transition Plan will outline a specific schedule for improvements after Completion of Step 2, and this schedule will reflect the **Municipality's** commitment to ADA compliance.

#### ADA COORDINATOR

The (**Name of Municipality**) ADA Coordinator is:

Name (*Name*) \_\_\_\_\_

Title (*Title*) \_\_\_\_\_

Provide ADA Coordinators' contact information:

**Name:** \_\_\_\_\_

ADA Coordinator \_\_\_\_\_

**Name of Municipality** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

# APPENDIX 13-4

## ADA PROPOSED WORK PLAN AND SCHEDULE

THE (MUNICIPALITY TYPE)  
OF (NAME OF MUNICIPALITY) **(Sponsor)**

### NOTE

Wherever the term "Municipality" and "Municipality's" occurs throughout this document, it refers to the named Municipal Sponsor indicated on this Cover Page.





# APPENDIX 13-5

## SETTING M/WBE GOALS

THE (MUNICIPALITY TYPE)  
OF (NAME OF MUNICIPALITY) (**Sponsor**)

## Appendix 13-5: SETTING M/WBE GOALS ON NON-FEDERALLY AIDED GRANT CONTRACTS

The provisions of New York State Executive Law Article 15-A *Participation by Minority Group Members and Women with Respect to State Contracts* and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ([5 NYCRR Parts 140-145](#)) are applicable to all State grant contracts. The Municipality/Sponsor/Grantee shall comply with these laws, rules, regulations, executive orders, and the M/WBE Program requirements.

All contracts entered into by Municipalities/Sponsors/Grantees in furtherance of State-issued, non-federally-aided, grants must include M/WBE goals that are derived from the New York State Department of Transportation's (NYSDOT's) Agency M/WBE Goal Plan established pursuant to New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145.

This goal is applicable to Municipalities/Sponsors/Grantees when they enter into contracts, in furtherance of the NYSDOT grant, as follows:

- a. Construction contracts greater than one hundred thousand dollars (\$100,000); or
- b. Contracts greater than twenty-five thousand dollars (\$25,000) for design and construction-related professional services (Architectural/Engineering).
- c. Contracts greater than twenty-five thousand dollars (\$25,000) for procurement of materials (commodities).

If any part of the Municipality's/Sponsor's/Grantee's grant is effectuated with either the Municipality's/Sponsor's/Grantee's employed workforce or through a pre-existing qualification-based consultant contract, then the Municipality/Sponsor/Grantee shall not apply M/WBE goals **to that portion of the work**. The Municipality/Sponsor/Grantee is encouraged to maximize M/WBE participation to the greatest extent practicable.

### Establish M/WBE Goals

The Municipality/Sponsor/Grantee agrees that the following Standard M/WBE Goals for projects entered into and funded, in whole or in part, with proceeds from a NYSDOT grant are provided.

**Standard M/WBE Goals**

<b>CATEGORY/CONTRACT TYPE</b>	<b>MBE</b>	<b>WBE</b>
Commodities	10.00%	20.00%
Construction/Consultants (Architectural/Engineering)	20.00%	10.00%
Construction	7.99%	10.00%
Services/Consultants (Non-Architectural/Engineering)	6.00%	16.00%

NOTE: See definitions

These Standard Goals are based on the NYSDOT’s Agency M/WBE Goal Plan, as a result of programmatic analysis. The Plan is available at the [M/WBE Program webpage](#) on the NYSDOT website.

The Municipality/Sponsor/Grantee agrees to consider the following statutory factors (See [5 NYCRR 142.2\(d\)](#)) and establish an appropriate contract goal in all related contracts executed by the Sponsor/Municipality/Grantee:

The Statutory Factors are:

1. The contract and subcontract scope(s) of work. (This may include a consideration of work items, quantity, contract terms, and materials, and whether the contract is a single operation or sole-source contract).
2. The potential subcontracting opportunities, available in the prime contract. (This may include a consideration of primary and secondary work operations).
3. The relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities. (See [Disparity Studies on the Empire State Development website](#)).
4. The number and types of certified minority and women-owned business enterprises found in the directory of certified minority and women-owned businesses available to perform the contract work. (The directory is accessible at the [New York State Contract System website](#).)
5. The geographic location of the contract performance.
6. The extent to which geography is material to the performance of the contract.
7. The ability and willingness of certified minority-owned and women-owned enterprises located outside of the geographic location of contract performance, notwithstanding

the regional location of the certified enterprise, to perform on the contract.

8. The total dollar value of the work required by the contract in relation to the dollar value of the subcontracting opportunities.
9. The relationship of the monetary size and term of the contract to the monetary size and term of the project for which the contract is awarded.

## **M/WBE Participation Evaluation Process**

### **Pre-Advertisement**

The Municipality/Sponsor/Grantee must analyze the statutory factors in relation to a contract's/consultant's work scope and circumstances. If the Municipality/Sponsor/Grantee determines a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee agrees to obtain NYSDOT approval by submitting: a **M/WBE Pre-Advertisement Goal Modification Request**, Good Faith Effort documentation, and the **M/WBE Goal Assessment Checklist** [obtained from the Office of Diversity and Opportunity] to NYSDOT's Regional Local Project Liaison (RLPL). The RLPL will review all supporting documentation to ensure that the GFE is sufficient.

If the RLPL determines:

- Supporting documentation is sufficient:
  - The RLPL will forward the M/WBE Pre-Advertisement Goal Modification Request, Good Faith Effort Documentation, and Goal Assessment Checklist to the Office of Diversity and Opportunity (ODO) for their review and approval.
- Supporting documentation is not sufficient:
  - The RLPL will notify the Sponsor in writing as to why the supporting documentation is insufficient.
  - The Sponsor will resubmit the documentation to the RLPL for review and submittal to ODO.

All requests for a M/WBE Pre-Advertisement Goal modification must be approved by NYSDOT prior to the advertisement of the contract.

### **Pre-Award**

Once a qualified consultant or low bidder is identified, project entry in NYSDOT's standard civil rights reporting software **Equitable Business Opportunity Solutions** (EBO) is required. The following steps are to be completed before award of the contract:

1. The Municipality/Sponsor/Grantee must submit both construction and consultant "Contract Templates," utilizing the "SA MWBE EBO Construction Template" and the "SA MWBE EBO Consultant Template" to the RLPL or MOPM.

2. The RLPL or MOPM will perform a Quality Assurance review on the Contract Templates. If any errors are identified, the templates will be returned to the Municipality/Sponsor/Grantee for corrections and returned to the RLPL or MOPM. Completed templates will be submitted via email to: [dot.sm.mo.localprograms.ebo@dot.ny.gov](mailto:dot.sm.mo.localprograms.ebo@dot.ny.gov) for upload.
3. Once the project information from the templates is uploaded into EBO, the RLPL or MOPM will be notified.
4. The RLPL or MOPM will then notify the Municipality/Sponsor/Grantee that the contract has been loaded into EBO.
5. The qualified consultant or the low bidder must enter their M/WBE utilization into EBO.
6. The Municipality/Sponsor/Grantee, RLPL, or MOPM must review this pre-award data to verify that the qualified consultant or the low bidder met the M/WBE goals.

If a qualified consultant or the low bidder:

- Provides commitments that meet or exceed the advertised goals, then the Municipality/Sponsor/Grantee may request the RLPL or the MOPM have the contract awarded in EBO.
- Does not provide commitments that meet or exceed the advertised goals, but can demonstrate adequate Good Faith Efforts (GFEs) to meet the goals:
  - The Municipality/Sponsor/Grantee must submit an **M/WBE Waiver Request** (See also: **NYS DOT Minority and Woman Owned Business Enterprises Program** website) along with all supporting justification, to the RLPL or MOPM to request a goal waiver.
  - The Municipality/Sponsor/Grantee must obtain NYS DOT approval of the M/WBE Waiver Request prior to awarding the contract.

If the Municipality/Sponsor/Grantee determines that the qualified consultant or the low bidder did not demonstrate adequate GFEs to meet the goals, the Municipality/Sponsor/Grantee should present its recommendation to award to the next qualified consultant or lowest bidder with analysis and supporting documentation to its management as well as to the RLPL or MOPM. Include the following with the recommendation:

- State the specific non-compliant actions,
- Cite the specification and regulation for each non-compliant action,
- Provide calculations of the amount achieved toward the M/WBE goal,
- Provide analysis of the feasibility of the M/WBE goals,
- Provide information on outreach to Low Bidder to meet the M/WBE goals,
- Information on the Second Bidder's goal demonstration; and
- Any other relevant information.

The Municipality/Sponsor/Grantee must follow their administrative processes as their

requirements state. If it is determined that the qualified consultant and the low bidder did not conduct adequate GFEs, with agreement from NYSDOT, the Municipality/Sponsor/Grantee may disqualify the qualified consultant and the low bidder and award to the second qualified consultant or low bidder who has successfully met the M/WBE goals or demonstrated adequate GFEs.

**NYSDOT will provide the reviewed and completed M/WBE Waiver Request to the Municipality/Sponsor/Grantee. NYSDOT approval of the M/WBE Waiver Request must be received prior to the award of the contract.**

### **Post Award**

If a consultant/contractor fails to attain its M/WBE commitment on a contract, including differences based on quantity or performance requirement changes, the Municipality/Sponsor/Grantee must submit a **M/WBE Waiver Request** and a new **M/WBE Goal Assessment Checklist**, obtained from the Office of Diversity and Opportunity, to the RLPL. The request must provide supporting justification by documenting the goals, commitments, attainments, and post-award Good Faith Efforts to meet the commitments.

If the RLPL determines:

- That the post-award supporting documentation is sufficient:
  - the RLPL will forward all post-award supporting documents from the Sponsor to ODO for review and approval.
- That the post-award supporting document is not sufficient:
  - the RLPL will notify the Sponsor in writing as to why the post-award supporting documentation is insufficient.
  - The Sponsor will resubmit the documentation to the RLPL for review and submittal to ODO.

NYSDOT will notify the Municipality/Sponsor/Grantee at the conclusion of the Waiver Request review.

If a consultant/contractor fails to attain its M/WBE commitment, the Municipality/Sponsor/Grantee may suspend contract payments in accordance with the contract agreement with the consultant/contractor. The consultant/contractor may be directed to comply with the Municipality/Sponsor/Grantee lawful procedures upon due notice in writing to the consultant/contractor, including cancellation, termination, or suspension in whole or in part in accordance with the contract agreement between the consultant/contractor and the Municipality/Sponsor/Grantee.

When the Municipality/Sponsor/Grantee determines that the consultant/contractor is not in compliance with the requirements of the contract and the consultant/contractor refuses to comply with such requirements, or if the consultant/contractor is found to have willfully and intentionally failed to comply with the M/WBE participation goals, the consultant/contractor shall be obligated to pay to the Municipality/Sponsor/Grantee liquidated damages up to 20% of the portion of the consultant/contractor's contracts and/or subcontracts, funded in whole or in part by the Municipality/Sponsor/Grantee agreement, to which contract goals are established in accordance with NYSDOT guidance, in accordance with 5 NYCRR Parts 140-145. The State may also assess liquidated damages against the Municipality/Sponsor/Grantee.

The Municipality/Sponsor/Grantee shall not take any non-compliance actions until review and approval have been completed by NYSDOT and notification made to the Municipality/Sponsor/Grantee.

### **Good Faith Efforts (GFEs)**

To assist the qualified consultant or low bidder in developing an appropriate justification for GFEs. See Good Faith Efforts Guidance at [Minority and Women-Owned Business Enterprises Program \(MWBE\)](#) (ny.gov)

Qualified consultant or low bidder's GFEs documentation shall include, but is not limited to:

1. Evidence of outreach to M/WBEs and M/WBEs' responses,
2. Copies of advertisements in appropriate general circulation, trade, and minority or women-oriented publications for participation by M/WBEs,
3. Dates of any meetings with M/WBEs; and
4. Documentation of actions taken to reasonably structure the Contract scope to maximize opportunities for M/WBE participation.

### **M/WBE Reporting**

The Municipality/Sponsor/Grantee shall monitor all M/WBE utilization through EBO. Municipality/Sponsor/Grantee must ensure that the consultant/contractor enters all data into EBO before NYSDOT will distribute the final payment of the project to the Municipality/Sponsor/Grantee.

### **M/WBE Participation on Emergency Contracts**

Contractors with Emergency contracts are encouraged to consider and include M/WBE firms to the extent appropriate and feasible. NYSDOT may require the contractor to submit a utilization plan and to comply with the post-award requirements of [5 NYCRR Part 140 -145](#) during the life of the contract. "Where and When" or "Standby" types of contracts are not necessarily emergency contracts as portions of the scope may be reasonably projected. Consult your RLPL or MOPM and the Office of Civil Rights prior to setting the M/WBE goals on such contracts.



## Implementation Details

All non-federally-aided contracts entered into by Municipalities/Sponsors/Grantees of state grant funds must conform to this guidance.

For more information about the [Minority and Women-Owned Business Enterprise Program](#), go to the NYSDOT website.

This guidance does not apply to formula-based legislated aid to localities, including but not limited to, Consolidated Local Street and Highway Improvement Program (CHIPs) and Statewide Mass Transportation Operating Assistance (STOA) program.

## Terms and Definitions

**Architectural Engineering (A/E)** - Private consulting persons or firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction inspection, and management services.

**Commodities** - A raw material that can be bought and sold. Examples of commodities include stone, culvert pipe, concrete, guiderail, etc.

**Equal Employment Opportunity (EEO)** – To ensure non-discrimination in employment on the basis of race, color, creed, or national origin. Contractors are required to submit workforce data to this end.

**Good Faith Effort (GFE)** - All necessary and reasonable activity and documentation by a consultant or contractor to demonstrate (show) steps taken to achieve M/WBE goal.

**Grant Agreement** – The agreement between the Sponsor/Municipality/Grantee and the State, which is necessary to obtain State aid reimbursement of eligible project costs. Also known as a State-Local Agreement (SLA).

**Main Office Project Manager (MOPM)** - NYSDOT Main Office contact for subrecipients advancing State or federally-funded transportation projects. The Main Office Project Manager is responsible for ensuring that locally administered transportation projects are administered in compliance with all federal, State, and local laws, rules, regulations, and executive orders.

**Office of Diversity and Opportunity (ODO)** – NYSDOT Main Office is responsible for ensuring compliance with federal and state civil rights laws, rules, regulations, and executive orders.

**New York State Unified Certification Program (NYS UCP)** - is responsible for only DBE certification in the state of New York and provides firms with "one-stop" shopping.

**Non-Architectural/Engineering** - Non-professional services which do not require a license from the NYS Education Department.

**Non-Federally Aided Grant Contracts** - locally-administered transportation projects that are typically funded in whole or in part with State funds and contain no federal program funds. Projects may be progressed by subrecipients/municipalities/grantees/sponsors. Projects may contain a local match as noted in each funding solicitation.

**North American Industry Classification System (NAICS)** - The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments to collect, analyze, and publish statistical data related to the U.S. business economy.

**Recipient** - An entity that receives funds in the form of a grant, cooperative agreement, or loan directly from the federal government. Typically, NYSDOT is referred to as a recipient, while a Sponsor is referred to as a sub-recipient.

**Regional Local Project Liaison (RLPL)** - Regional Office contact for Sponsors advancing federal and/or State aid transportation projects. The RLPL is responsible for ensuring that locally administered projects receive adequate supervision and inspection such that they comply with all federal, State, and local laws, rules, and regulations as well as federal and state executive orders.

**Subrecipient** - A county, city, town, village, railroad, airport, transit operator or other public agency, public authority, or nonprofit organization authorized and designated under its agreement with NYSDOT to design, acquire ROW, advertise, open bids, award, construct and administer contracts for state aid transportation projects. A subrecipient may also be referred to as the Municipality/Sponsor/Grantee.

**Vendor** – An interchangeable term used for a contractor/consultant who provides a service.

**Instructions:** This document is used to assess Minority/Women-Owned Enterprise (MWBE) project goals. Complete all yellow cells. Identify all work the Prime is to perform and the estimated value/cost of each major category. For both Sub-Contracting and Material Availability, break the project into major areas and identify tasks or items. Using the MWBE Contract Database (<https://ny.newyorkcontracts.com/>), perform the MWBE search and include the number of MBE and WBEs identified for each line. This document will then calculate the recommended goals for the project based on the number of each identified. Attach proof of your searches to this document.

Region:		Contract Number:	
Project Title:			
Prepared By:		Total Project Estimate:	\$0
E-Mail:		Estimated Prime to Perform	\$0
		Estimated Subcontracting	\$0
		Estimated Materials	\$0
		Balance	\$0

Balance Represents the remaining project value to be performed by either the Prime, Sub-Contractor or Material Contractor

Recommended Goals for Project	
MBE:	0%
WBE:	0%

Comments/Notes

Prime to Perform			
	Description of Work	Estimated Value	% of Project Estimate
1			
2			
3			
4			
5			
	<b>Total</b>	\$0	0%
	<b>Overhead &amp; Profit</b>		0%
	<b>Total Prime to Perform</b>	\$0	0%

Sub-Contracting Availability				MBE Participation			WBE Participation				
	Description of Work	Estimated Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
1											
2											
3											
4											
5											
	<b>Total</b>	\$0	0%	\$0		-	0%		Total	-	0%

Materials Availability					MBE Participation			WBE Participation					
	Description	Estimated Value	% Discount based on Supplier/Broker Credit*	Discounted Value	% of Project Estimate	MWBE Search Performed (Y/N)	No. MBE's Identified	Estimated Value	Percent	No. WBE's Identified	Calculated Field	Estimated Value	Percent
1					0%								
2					0%								
3					0%								
4					0%								
5					0%								
6					0%								
7					0%								
8					0%								
	<b>Total</b>	\$0		\$0	0%	\$0		-	0%		Total	-	0%

\* Discounts are as follows: Non Construction; Supplier 100%, Broker 25% Construction; Supplier 60%, Broker receives commission %

Attach All MWBE Search Results to this Checklist

# APPENDIX 13-6

## SETTING SDVOB GOALS

THE (MUNICIPALITY TYPE)  
OF (NAME OF MUNICIPALITY) (**Sponsor**)

## Appendix 13-6: SETTING SDVOB GOALS ON NON-FEDERAL AID GRANT CONTRACTS

The provisions of New York State Veteran Services Law Article 3 Participation by Service-Disabled Veteran-Owned Business with Respect to State Contracts and 9 NYCRR 252.2 are applicable to all State grant contracts. The Municipality/Sponsor/Grantee shall comply with these laws, rules, regulations executive orders, and the [SDVOB Program requirements](#).

All contracts entered into by Municipalities/Sponsors/Grantees in furtherance of State-issued, non-federal aid grants must include an SDVOB goal derived from the New York State Department of Transportation's (NYSDOT's) SDVOB Goal Plan established pursuant to New York State Veteran Services Law Article 3.

This goal is applicable to Municipalities/Sponsors/Grantees when they enter into contracts, in furtherance of the NYSDOT grant, as follows:

1. Construction contracts greater than one hundred thousand dollars (\$100,000); or
2. Contracts greater than twenty-five thousand dollars (\$25,000) for design and construction-related professional services (Architectural/Engineering); or
3. Contracts greater than twenty-five thousand dollars (\$25,000) for procurement of materials (commodities).

If any part of the Municipality's/Sponsor's/Grantee's grant is effectuated by either the Municipality's/Sponsor's/Grantee's employed workforce or through a pre-existing qualification-based consultant contract, then the Municipality/Sponsor/Grantee shall not apply SDVOB goals to that portion of the work. The Municipality/Sponsor/Grantee is encouraged to maximize SDVOB participation to the greatest extent practicable.

### Establish SDVOB Goal

The Municipality/Sponsor/Grantee agrees that the statutory SDVOB Goal for projects entered into and funded, in whole or in part, with proceeds from a NYSDOT grant is six percent (6%).

As a result of programmatic analysis, the NYSDOT's SDVOB Goal Plan recommends an Agency goal that reflects consideration of the factors identified below. The Plan is available at [NYSDOT SDVOB FY2021 Goal Plan](#).

1. The contract and subcontract scope(s) of work, including consideration of work items, quantity, contract terms, materials, and whether the contract is a single operation or sole-source contract.
2. The potential subcontracting opportunities available in the prime contract include considering primary and secondary work operations.

3. The number and types of certified service-disabled veteran business enterprises found in the directory of certified service-disabled veteran-owned businesses available to perform the contract work. The directory is accessible at OGS's [Directory of New York State Certified Service-Disabled Veteran-Owned Businesses](#) website.
4. The geographic location of the contract performance.
5. The extent to which geography is material to the performance of the contract.
6. The ability and willingness of certified service-disabled veteran-owned business enterprises located outside of contract performance's geographic location, notwithstanding the certified enterprise's regional location, to perform on the contract.
7. The total dollar value of the work required by the contract in relation to the dollar value of the subcontracting opportunities.
8. The relationship of the monetary size and term of the contract to the monetary size and term of the project for which the contract is awarded.

## **SDVOB Participation Evaluation Process**

### **Pre-Advertisement**

The Municipality/Sponsor/Grantee must analyze the statutory factors in relation to a contract's/consultant's work scope and circumstances. If the Municipality/Sponsor/Grantee believes a goal modification is appropriate and supportable, the Municipality/Sponsor/Grantee must obtain approval from the Office of Diversity and Opportunity by submitting a [SDVOB Pre-Advertisement Goal Modification Request](#) with justification to NYSDOT's Regional Local Project Liaison (RLPL) or Main Office Project Manager (MOPM) prior to public advertisement of the contract. The ODO must approve all requests for an SDVOB Pre-Advertisement Goal modification of Civil Rights.

### **Pre-Award**

Once a qualified consultant or low bidder is identified, project entry in NYSDOT's standard civil rights reporting software [Equitable Business Opportunity Solutions \(EBO\)](#) is required. The following steps are to be completed before award of the contract:

1. The Municipality/Sponsor/Grantee will submit "Contract Templates" to the RLPL or MOPM. There are two [contract templates](#) for construction projects, "State Aid EBO Construction Template" and the other for consultant contracts, "State Aid EBO Consultant Template."
2. The RLPL or MOPM will perform a Quality Assurance review on the Contract Templates. If any errors are identified, the templates will be returned to the Municipality/Sponsor/
3. Grantee for corrections and returned to the RLPL or MOPM. Completed templates will be submitted to the email: [dot.sm.mo.localprograms.ebo@dot.ny.gov](mailto:dot.sm.mo.localprograms.ebo@dot.ny.gov) for upload.



4. Once the project information from the templates is uploaded into EBO, the RLPL or MOPM will be notified.
5. The RLPL or MOPM will notify the Municipality/Sponsor/Grantee that the contract has been loaded into EBO.
6. The qualified consultant or the low bidder must enter their SDVOB participation into EBO.
7. The Municipality/Sponsor/Grantee, RLPL, or MOPM must review this pre-award data to verify that the qualified consultant or the low bidder met the SDVOB goals or submitted an adequate Good Faith Effort (GFE).

If a qualified consultant or the low bidder:

- Provides commitments that meet or exceed the advertised goals, then the Municipality/Sponsor/Grantee may request the RLPL or the MOPM have the contract awarded in EBO and award the contract.
- Does not provide commitments that meet or exceed the advertised goals, but can demonstrate adequate Good Faith Efforts (GFEs) to meet the goals:
  - The Municipality/Sponsor/Grantee must submit an **SDVOB Waiver Request Form**, with supporting justification, to the RLPL or MOPM to request a goal waiver.
  - The Municipality/Sponsor/Grantee must obtain the NYSDOT approval of the SDVOB Waiver Request prior to awarding the contract.

If the Municipality/Sponsor/Grantee determines that the qualified consultant or the low bidder did not demonstrate adequate GFEs to meet the goals, the Municipality/Sponsor/Grantee should present its recommendation to award to the next qualified consultant or lowest bidder with analysis and supporting documentation to its management as well as to the RLPL or MOPM for approval prior to proceeding with the award. Include the following with the recommendation:

- State the specific non-compliant actions,
- Cite the specification and regulation for each non-compliant action,
- Provide calculations of the amount achieved toward the SDVOB goal,
- Provide analysis of the feasibility of the SDVOB goal,
- Provide information on outreach to Low Bidder to meet the SDVOB goal,
- Information on the Second Bidder's goal demonstration; and
- Any other relevant information.

The Municipality/Sponsor/Grantee must follow their administrative processes as their requirements state. If it is determined that the qualified consultant and the low bidder did not conduct adequate GFEs, with agreement from NYSDOT, the Municipality/Sponsor/Grantee may

disqualify the qualified consultant or the low bidder and award to the second qualified consultant or low bidder who has successfully met the SDVOB goal or demonstrated adequate GFEs.

**NYSDOT will provide the reviewed and completed SDVOB Waiver Request to the Municipality/Sponsor/Grantee. NYSDOT approval of the SDVOB Waiver Request must be received prior to the award of the contract.**

### **Post Award**

If a consultant/contractor fails to attain its SDVOB commitment on a contract, including differences based on quantity or performance requirement changes, the Municipality/Sponsor/Grantee must submit a **SDVOB Waiver Request** when the contract is approximately 75% completed to the RLPL or MOPM. The request must document the goals, commitments, attainments, and Good Faith Efforts to meet the commitments, along with supporting justification.

If a consultant/contractor fails to attain its SDVOB commitment, the Municipality/Sponsor/Grantee may suspend contract payments in accordance with the contract agreement with the consultant/contractor. The consultant/contractor may be directed to comply with the Municipality's/Sponsor's/Grantee's lawful procedures upon due notice in writing to the consultant/contractor, including cancellation, termination, or suspension in whole or in part in accordance with the contract agreement between the consultant/contractor and the Municipality/Sponsor/Grantee.

When a Municipality/Sponsor/Grantee determines that a consultant/contractor is not in compliance with the requirements of the contract and the consultant/contractor refuses to comply with such requirements, or if a consultant/contractor is found to have willfully and intentionally failed to comply with the SDVOB participation goals, the consultant/contractor shall be obligated to pay to the Municipality/Sponsor/Grantee liquidated damages up to 20% of the portion of the consultant/contractor's contracts and/or subcontracts, funded in whole or in part by the Municipality/Sponsor/Grantee agreement, to which contract goals are established in accordance with NYSDOT guidance. The State may also assess liquidated damages against the Municipality/Sponsor/Grantee.

The Municipality/Sponsor/Grantee shall not take any non-compliance actions until review and approval have been completed by NYSDOT and notification made to the Municipality/Sponsor/Grantee.



## Good Faith Efforts (GFEs)

To assist the qualified consultant or low bidder in developing an appropriate justification for GFEs. See Good Faith Efforts Guidance at [Good Faith Efforts Document Guidance](#).

Qualified consultant or low bidder's Good Faith Efforts documentation shall include, but is not limited to:

3. Evidence of outreach to SDVOB and SDVOB responses,
4. Copies of advertisements in appropriate general circulation, trade, and veteran-oriented publications for participation by SDVOBs,
5. Dates of any meetings with SDVOBs; and
6. Documentation of actions taken to reasonably structure the Contract scope to maximize opportunities for SDVOB participation.

## SDVOB Reporting

The Municipality/Sponsor/Grantee shall monitor all SDVOB participation through EBO. Municipality/Sponsor/Grantee must ensure that the consultant/contractor enters all data into EBO before NYSDOT will distribute the final payment of the project to the Municipality/Sponsor/Grantee.

## SDVOB Participation on Emergency Contracts

Contractors with Emergency contracts are encouraged to consider and include SDVOB firms to the extent appropriate and feasible. NYSDOT may require the contractor to submit a utilization plan and to comply with the post-award requirements during the life of the contract. "Where and When" or "Standby" types of contracts are not necessarily emergency contracts as portions of the scope may be reasonably projected.

Sponsor should consult their RLPL or MOPM and the ODO prior to setting the SDVOB goals on such contracts.

## Implementation Details

All future non-federal aided contracts entered into by Municipalities/Sponsors/Grantees of State grant funds must conform to this guidance.

Guidance can be found ~~on~~ in the [Civil Rights Service-Disabled Veteran-Owned Business Program](#).

This guidance does not apply to formula-based legislated aid to localities, including but not limited to, Consolidated Local Street and Highway Improvement Program (CHIPs) and Statewide Mass Transportation Operating Assistance (STOA) program.

# APPENDIX 13-7

## GOOD FAITH EFFORTS (GFE) DOCUMENTATION GUIDE

## Appendix 13-7: Good Faith Efforts

To be a responsible and/or responsive Bidder, your firm must meet the Disadvantaged Business Enterprise (DBE) or Minority Business Enterprise (MBE), Women's Business Enterprise (WBE), and Service-Disabled Veteran-Owned Business (SDVOB) goal(s) on the contract or provide documentation to support Good Faith Efforts taken to meet these goal(s). Actions to meet the goal(s) should begin immediately upon a firm's intent to work for NYSDOT on a project.

The Bidder can meet this requirement during the pre-award or pre-designation stage in two ways:

1. The Bidder can document commitments that meet the goal(s).
2. If the Bidder does not document enough commitments toward meeting the goal(s), the Bidder can provide documentation showing detailed, tangible, result-oriented efforts that show the Bidder's attempts to fulfill the goal(s).

Per NYSDOT Standard Specs §102-12 H. *Good Faith Efforts*, should you be selected as the apparent low bidder or pre-designated firm, all Good Faith Effort documentation will be evaluated prior to the actual award of the contract to your firm.

### THE GUIDANCE PROVIDED BELOW OUTLINES WHAT CONSTITUTES SUFFICIENT AND COMPREHENSIVE GOOD-FAITH EFFORTS.

Additional guidance can be found in the [DBE/MBE/WBE/SDVOB Contractors Solicitation and Good Faith Efforts Guide](#) located on the NYSDOT website.

#### Pre-Letting & Pre-Designation Good Faith Efforts

Once you have made the decision to entertain bidding on a project you should, at a minimum:

1. Analyze each item in the scope of work for a project and determine what items of work will provide subcontracting opportunities.
2. Search the appropriate registry for certified firms:
  - a. For DBE search [New York State Unified Certification Program \(NYSUCP\) Directory](#).
  - b. For MBE and WBE search ESD Directory, search the [New York State Contract Directory](#).
  - c. For SDVOB search: Office of General Services [Directory of New York State Certified Service-Disabled Veteran-Owned Businesses](#).

Tailor the search to those firms with business descriptions or NAICS codes that are most appropriate for the work identified. NYSDOT has developed a Crosswalk chart that equates NYSDOT Work Codes/ Pay Items with NAICS/NIGP codes.

3. Notify those firms of your intent to bid via email and telephone, requesting written feedback on their interest in participation on your contract.

4. Ensure adequate time is given to the DBE/MBE/WBE/SDVOB firms to offer responses.

For more information regarding NAICS, go to the [NAICS directory](#) at the U.S. Census website.

The Crosswalk chart is located at the NYSDOT [Office of Construction: Forms](#) website.

Once a firm has been deemed a low bidder or selected for pre-designation, commitments to DBE/MBE/WBE/SDVOB firms must be entered into the Department's civil rights reporting software program Equitable Business Opportunity (EBO). All DBE/MBE/WBE/SDVOB firms are required to acknowledge the items and dollar commitments assigned to them in EBO during the pre-award process.

Any shortfall in goal commitment requires supporting documentation to be provided to show all efforts taken. These Good Faith Efforts should include, at a minimum:

<b>Required Documentation of Good Faith Efforts</b>	
<input type="checkbox"/>	Completed AAP-10 Solicitation log: This log should list only those firms that were directly solicited. <b>Do not list mass emailing's performed.</b> Outreach should be narrowly focused, targeted and result oriented. <u>NOTE:</u> for the AAP-10 to be accepted it must be completed according to instructions provided.
<input type="checkbox"/>	Detailed explanation identifying any circumstances unique to the contract that were deterrents to meeting the goal(s) (e.g., night work, small quantities over multiple locations, specialized work, PLA, etc.). The explanation should also include detailed rationale as to why a specific scope of work in the project is not considered to be a subcontract item, and therefore was not solicited for.
<input type="checkbox"/>	Copies of ads placed for solicitation.
<input type="checkbox"/>	Copies of <u>all</u> registry searches performed including those searches that resulted in no certified firms for a specific scope of work.
<input type="checkbox"/>	Copies of emails and/or faxes that show "direct" scope of what you solicited the subcontractor/supplier, fabricator, etc. to do or provide <b>and</b> their responses.
<input type="checkbox"/>	Evidence that off-site firms and services were entertained (e.g., material suppliers, trucking, fabricator, manufacturer, etc.).
<input type="checkbox"/>	Copies of documentation showing negotiations took place between low bidder and prospective subcontractor or other firms (supplier, manufacturer, fabricator, etc.).
<input type="checkbox"/>	Quotes from the selected firms and quotes received when a specific scope of work was given to a non-certified firm versus a certified firm (when certified firm's quote was deemed unreasonable or excessive).
<input type="checkbox"/>	Detailed explanation for any scope of work deemed "self-performing" without intent to split the work (when there are DBE or MBE/WBE/SDVOB availability and goal has not been met).
<input type="checkbox"/>	Supporting documentation of any and all additional efforts performed prior to letting or pre-designation date.

Examples of insufficient/unacceptable documentation includes:

- “In-house” generated lists that do not include DBE or MBE/WBE/SDVOB targeted firms.
- “In-house” generated lists that do not identify firms for specific work items or descriptions being solicited.
- Copies of redundant emails to DBE/MBE/WBE/SDVOB firms containing identical language.
- Unsubstantiated response of non-interest from DBE or MBE/WBE/SDVOB firms.
- Numerous copies of the entire contract sent to each firm to attempt to provide quantity in lieu of quality.

## APPENDIX 13-8 LINKS

TITLE	LINK
<b>FEDERAL LAWS &amp; REGULATIONS</b>	
2010 ADA Standards for Accessible Design	<a href="https://www.ada.gov/law-and-regs/design-standards/2010-stds/">https://www.ada.gov/law-and-regs/design-standards/2010-stds/</a>
<b>STATE LAWS &amp; REGULATIONS</b>	
5 NYCRR Part 140: Definitions	<a href="https://cdn.esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REGS.pdf">https://cdn.esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REGS.pdf</a>
5 NYCRR Part 142.2(d): Determining goals for a State contract	<a href="https://govt.westlaw.com/nycrr/Document/4e8b8082cd1711dda432a117e6e0f345?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)">https://govt.westlaw.com/nycrr/Document/4e8b8082cd1711dda432a117e6e0f345?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)</a>
5 NYCRR Part 104-145: Division of Minority and Women’s Business Development	<a href="https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I850b0fa0ba4411dd9542e0ba6da0bcf0&amp;originationContext=documenttoc&amp;transitionType=Default&amp;contextData=(sc.Default)">https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I850b0fa0ba4411dd9542e0ba6da0bcf0&amp;originationContext=documenttoc&amp;transitionType=Default&amp;contextData=(sc.Default)</a>
9 NYCRR Part 252.2	<a href="https://govt.westlaw.com/nycrr/Document/1e8529745221211e4a6bf0000845b8d3e?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)">https://govt.westlaw.com/nycrr/Document/1e8529745221211e4a6bf0000845b8d3e?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)</a>
<b>NYSDOT POLICIES, PROCEDURES, &amp; GUIDANCE</b>	
<b>Contract Templates/Civil Rights Forms (not in EBO)</b>	<a href="https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights">https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights</a>
<b>DBE/MBE/WBE/SDVOB Contractors Solicitation and Good Faith Efforts Guide</b>	<a href="https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights">https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights</a>
<b>Equitable Business Opportunities Solutions (EBO)</b>	<a href="https://www.dot.ny.gov/dotapp/ebo">https://www.dot.ny.gov/dotapp/ebo</a>
<b>Limited English Plan</b>	<a href="https://www.dot.ny.gov/divisions/policy-and-strategy/public-trans-respository/Attachment%20D-1%20LEP_Plan.pdf">https://www.dot.ny.gov/divisions/policy-and-strategy/public-trans-respository/Attachment%20D-1%20LEP_Plan.pdf</a>
<b>M/WBE Goal Assessment Checklist</b>	<a href="https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/repository/MWBE%20Goal%20Assessment%20Checklist.xlsx">https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/repository/MWBE%20Goal%20Assessment%20Checklist.xlsx</a>
<b>M/WBE Pre-Advertisement Goal Modification Request</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program">https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program</a>

<b>M/WBE Waiver Request</b>	<a href="https://www.dot.ny.gov/dotapp/ebo">https://www.dot.ny.gov/dotapp/ebo</a>
<b>Minority and Woman Owned Business Enterprises Program</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program">https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program</a>
<b>Office of Construction, Forms (Crosswalk Chart)</b>	<a href="https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights">https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights</a>
<b>SDVOB FY2021 Goal Plan</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SERVICE%20DISABLED%20VETERAN%20Master%20Goal%20Plan%20DRAFT%202020-2021.pdf">https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SERVICE%20DISABLED%20VETERAN%20Master%20Goal%20Plan%20DRAFT%202020-2021.pdf</a>
<b>SDVOB Good Faith Efforts Documentation Guidance</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program">https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program</a>
<b>SDVOB Pre-Advertisement Goal Modification Request</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SDVOB%20Pre-Letting%20Waiver%20Request%20Template.doc">https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/SDVOB%20Pre-Letting%20Waiver%20Request%20Template.doc</a>
<b>SDVOB Waiver Request Form</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/20190220_SDVOBRequestforWaiverForm%20(1).doc">https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/20190220_SDVOBRequestforWaiverForm%20(1).doc</a>
<b>Service Disabled Veteran-Owned Business (SDVOB) Program</b>	<a href="https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program">https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program</a>

## ADDITIONAL RESOURCES

<b>Empire State Development: Minority and Women's Business Development Reports, Annual Reports (Disparity Studies)</b>	<a href="https://esd.ny.gov/mwbe-reports">https://esd.ny.gov/mwbe-reports</a>
<b>New York State Contract System</b>	<a href="https://ny.newnycontracts.com/">https://ny.newnycontracts.com/</a>
<b>New York State Unified Certification Program (NYSUCP) Directory</b>	<a href="https://nysucp.newnycontracts.com/">https://nysucp.newnycontracts.com/</a>
<b>Office of General Services, Directory of New York State Certified Service-Disabled Veteran-Owned Businesses</b>	<a href="https://online.ogs.ny.gov/SDVOB/search">https://online.ogs.ny.gov/SDVOB/search</a>
<b>United States Census, North American Industry Classification System (NAICS) Code Directory</b>	<a href="https://www.census.gov/naics/">https://www.census.gov/naics/</a>

New York State  
Department of Transportation  
**Local Projects Manual**

**Chapter 14**  
**Advertisement, Contract Letting,  
and Award**





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**ACRONYMS**

CCA-2	New York State Uniform Contracting Questionnaire	LPB	Local Programs Bureau
CMP	Construction Management Plan	M/WBE	Minority/Woman-Owned Business Enterprise
DBE	Disadvantaged Business Enterprises	NYSCR	New York State Contract Reporter
EBO	Equal Business Opportunity	PS&E	Plans, Specifications, and Estimates
EEO	Equal Employment Opportunity	RLPL	Regional Local Project Liaison
FHWA	Federal Highway Administration	UCP	New York State Unified Certification Program
GFE	Good Faith Effort		

**NOTE**

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter links) can be found at the end of this chapter, in **Section 14.9 References, Chapter 9, Advertisement, Contract Letting, and Award.**

## 14.1 INTRODUCTION

This chapter describes the various phases of the contracting process including solicitation of bidders (advertising), bid opening, bid analysis to identify the lowest bidder, and contract award and documentation for locally administered federal aid transportation construction contracts. The Sponsor must have an approved Construction Management Plan (CMP) prior to contract award, appropriately revised to reflect project staffing and be signed by the NYSDOT Regional Local Project Liaison (RLPL), or appropriate designee (see [LPM Chapter 12, Section 12.2.2](#) and [Appendix 12-3](#)).

The following federal regulations apply to ALL projects:

- Advertising for bids and proposals ([23 CFR 635.112](#)),
- Method of Construction ([23 CFR 635.104](#)),
- Participation by Disadvantaged Business Enterprises (DBE) in US Department of Transportation Financial Assistance Programs ([49 CFR 26](#)); and
- Equal Employment Opportunity (EEO) on Federal and Federal-Aid Construction Contracts (Including Supportive Services) ([23 CFR 230](#)).

When a discrepancy exists between federal, state, and municipal laws, rules and regulations, federal law prevails; with the exception when State and municipal laws, rules, and regulations may be stricter and therefore have precedence.

## 14.2 ADVERTISING

Advertising for all federal aid construction contracts must meet federal requirements and foster widespread competitive bidding. When the contract bid documents, including Plans, Specifications, and Estimate of quantities (PS&E), have been assembled, and approved by the RLPL and the Sponsor receives Federal Authorization to Proceed from the RLPL, the Sponsor is required to advertise the contract for bidding in accordance with [23 CFR 635.112](#). The Sponsor could forfeit federal reimbursement if the advertisement of a contract takes place before receiving a Notification to Proceed.

New York State requires the publication of the solicitation of bids for a construction contract to be advertised in [The New York State Contract Reporter](#) (NYSCR) for at least three weeks (15 business days) before the opening of the bids. Additionally, the Sponsor is encouraged to place additional advertisements in other appropriate publications (e.g., local newspapers, trade journals). The use of several forms of advertising publications will help avoid a single bidder, as well as give more opportunities to fulfill both DBE and EEO requirements. Advertising costs should be charged to the construction phase. A Construction Advertisement Checklist and a sample Notice to Bidder – Advertisement to Bid indicates the information to be included in an advertisement (see [Appendix 14-7](#) and [Appendix 14-8](#)).

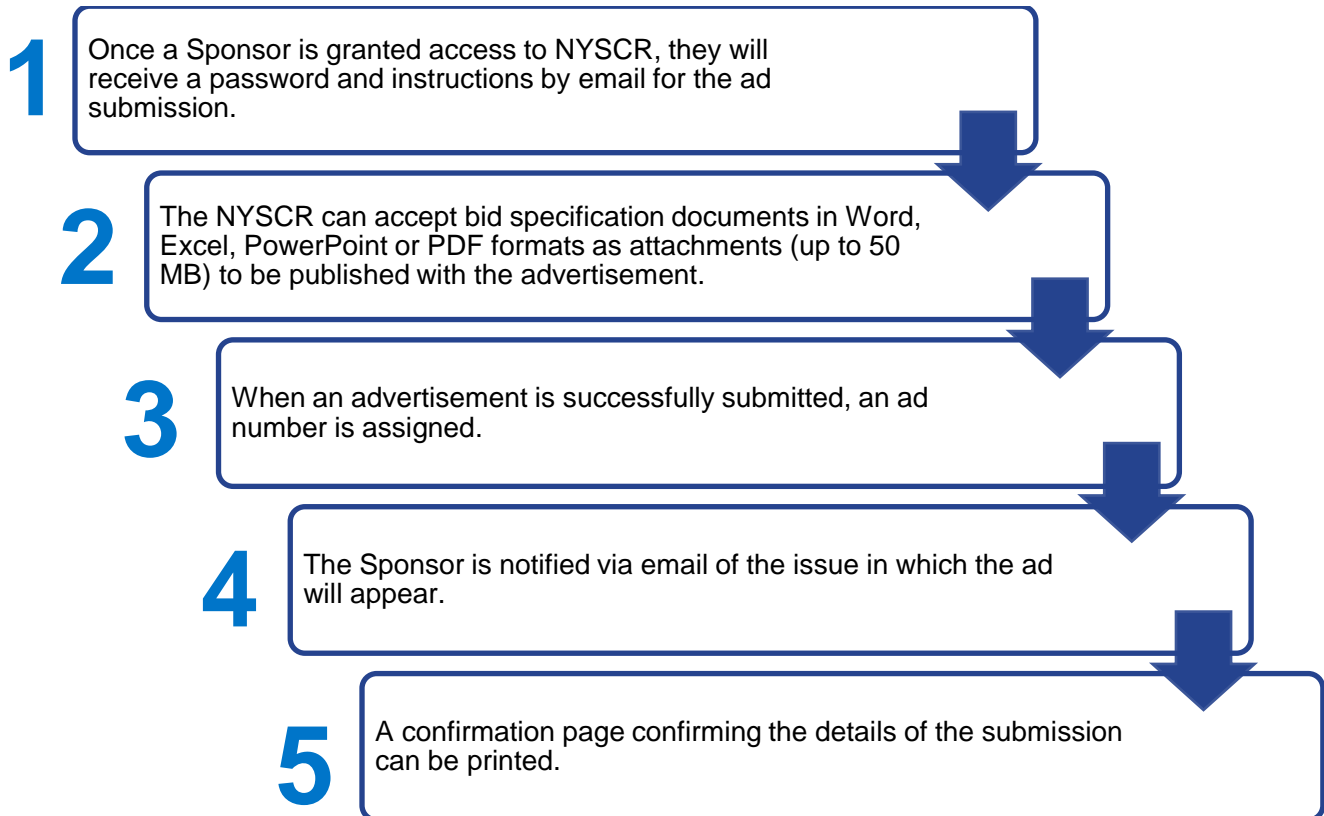
**Construction contracts must be advertised in the New York State Contract Reporter.**

The advertisement must identify the EEO goals for women and minorities in every contract regardless of fund source. The advertisement must identify DBE contract goals (federal funds), if applicable. If a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible. If the contract is state-funded (non-federal funds) the advertisement must identify Minority/Women-Owned Business Enterprise (M/WBE) goals.

### 14.2.1 New York State Contract Reporter (NYSCR)

The NYSCR is an exclusively online publication requiring electronic submission of advertising content. To comply with federal requirements, all contracts with New York State (including locally administered federal aid transportation projects) for the procurement of goods and services must be published in the NYSCR. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered before submitting advertisements and may do so from the [NYSCR registration website](#).

**Figure 14-1: Sponsor’s New York State Contract Reporter Registration Steps**



Additionally, the NYSCR can capture and provide in an Excel format, a list of registered users who viewed, bookmarked, opened bid documents, or opted to receive bid update notifications for the advertisement, including their contact information. All information exchanges with the NYSCR (email confirmations, downloaded spreadsheets, screen captures of advertisements, etc.) should be printed and kept in the project file.

The NYSCR is published on weekdays and new solicitations appear every morning. Any advertisement submitted successfully to the NYSCR on a given day appears the following business day. Advertisements submitted Friday, Saturday or Sunday appear on Monday, if it is not a legal holiday.

The earliest bid due date allowed in the ad insertion form shall be 15 business days (Monday-Friday) after the advertisement is published. The insertion, publication, and earliest due dates can be calculated by using the Publication Calculator Tool on the NYSCR's website. If an earlier bid due date becomes necessary, the Sponsor must get approval from the RLPL, with help from the NYSCR, which can be sought through the NYSCR Contact Us page, link provided in [Section 14.9 Reference](#) or by calling Empire State Development, Procurement Assistance Services/NYSCR at (518) 292-5266.

Contracts to be awarded on a sole source or single source basis must have prior approval from the Main Office Local Programs Bureau (LPB). If approved, they will also need to be advertised.

Sole source is a situation in which only one contractor can supply the goods or services.

Single source is when two or more contractors can supply the goods or services, but one is selected over the others because of distinguishable expertise, previous experience with similar contracts, etc.

### 14.2.2 Instructions to Bidders Regarding Proposed DBE Participation

Revision to [NYSDOT Standard Specification Section 102-12](#), participation indicates that the bidder shall submit DBE commitments with its proposal, including DBE name, address, work category, a brief description of work, and estimated commitment amount. To assist the Sponsor with collecting this information, see [Appendix 14-9, Proposed DBE Commitment](#).

## 14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, and prior to the opening of bids. The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.

**The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.**

The following should be considered when a Sponsor is contemplating amending a contract:

- If significant changes to the scope or scale are necessary, the Sponsor should seek advice from the RLPL (changes may require FHWA approval if the project is on the NHS or a Project of Division Interest). If the changes are not allowed or appropriate to be incorporated by amendment the Sponsor should cancel the advertisement, redesign the project, and then re-let the project.
- An amendment should be issued when the following errors are discovered:
  - Any contract pay-item quantity change of  $\pm 20\%$  in Engineer's Estimate.
  - Any contract pay-item quantity change, multiplied by the estimated unit price (or change in a lump sum item), which alters the total engineer's estimate by more than  $\pm 1\%$ .
  - DBE goal incorrectly stated in the contract.
  - EEO goals incorrectly stated in the contract.

## 14.4 BID LETTING AND BID ANALYSIS

Per [23 CFR 635.113\(a\)](#):

*"All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting."*

If the proposal includes alternate bidding procedures, the contract budget and alternate bidding award procedures must be declared before opening bids and the announcement of the apparent low bidder (see [LPM Section 12.5.9](#)). After all bid totals have been read aloud, the apparent low bidder is announced, and all bidders are informed that award is pending a complete bid analysis including mathematical verification and affirmation that the low bidder is responsible. The bid analysis shall be concluded, and contract award shall be made within 45 days as noted in [New York State Finance Law Section 140](#) and [NYS General Municipal Law Section 105](#). If the award is not completed within 45 days, the contractor may withdraw their bid from consideration.

**Bids must be publicly opened and read aloud.**

Negotiation with any bidder (i.e., adjusting quantities, changing unit prices, adding, and subtracting work, etc.) before contract award is prohibited per [23 CFR 635.113\(a\)](#).

The Sponsor should use [Appendix 14-6, After Letting Checklist](#), as a resource for the necessary steps and documentation from Letting to Award.

### 14.4.1 Bidder Responsibility

For all federal aid contracts, determination of whether or not a business entity is a “responsible bidder” is made using the guidelines established by [9 NYCRR 4.170](#) whereby a contractor/vendor may be deemed “not responsible.”

The following must be verified as part of the bidder responsibility review by the Sponsor:

- For all contracts, the [New York State Uniform Contracting Questionnaire \(CCA-2\)](#) is used in the qualification of an entity as a “responsible bidder.”
  1. The NYSDOT Contract Management Bureau is responsible for reviewing and approving the CCA-2 questionnaire. After the low bidder is determined, the Sponsor should contact the RLPL as soon as possible to see if a CCA-2 is on file for the bidder. If not, a questionnaire shall be completed by the low bidder and submitted to the Contract Management Bureau as instructed. A link to the CCA-2 questionnaire is on [NYSDOT’s website](#). Similar checks must be conducted on subcontractors (see [LPM Chapter 15](#)). RLPLs should access the [AASHTOWare Project Preconstruction database](#) to confirm that a vendor (contractor and subcontractors) has an approved CCA-2 on file.
  2. The United States General Services Administration’s System for Award Management (SAM) [Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid](#).
  3. NYS Department of Labor’s monthly [List of Employers Ineligible to Bid on or be Awarded any Public Work Contract](#).
  4. NYS Department of State’s [Corporation/Business Entity Database](#) to ensure that Corporations, Professional Corporations, Limited Liability Companies, and Limited Liability Partnerships have the proper authority to conduct business in New York State.
    - The Sponsor should print out the result of their search of the above databases and keep it in the project files. Acknowledgment of certification is noted in the “Bid Opening, Verification, and Sponsor Recommendation” letter ([Appendix 14-1](#)) to be provided with the Award Package as noted in [Section 14.7](#).
  5. Office of Safety and Health Administration (OSHA) website for [safety violations for a given firm](#).
  6. In the event, there is an OSHA violation against the low bidder, it should not be an automatic disqualification. Provide a discussion indicating the violation, if it has been addressed or is being addressed as a statement to be provided with the Award Package as noted in Section 14.7.

## 14.4.2 Bid Analysis

The Sponsor must conduct a bid analysis to ensure that the apparent low bid is responsible and reasonable and that the contract award will best promote the public interest. The preparation of a Tabulation of Bids (see [Appendix 14-4](#)) should be completed to include all bidders. A bid analysis generally consists of a comparative review between the Engineer's Estimate and the apparent low bidder's bid to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid. Information relative to the other bidders in the Tabulation of Bids is of value during the bid analysis if significant variations become apparent between the apparent low bid and the Engineer's Estimate.

The following steps must be performed for each contract as part of the bid analysis:

1. Review the bid items that are 25% over or under the Engineer's Estimate and look for potential errors.

A significant difference between the Engineer's Estimate and the total contract or item bid price by the apparent low bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may indicate market conditions and competition relative to an individual project. A low total contract bid price by a bidder relative to other bidders closer to the Engineer's Estimate may suggest a misinterpretation of the bid documents by the Low Bidder; or simply that the Low Bidder has limited work and is bidding work closer to cost.

2. Evaluate items with high bid costs to determine if there is an omission or error in the plans or specifications. If something unusual is found, review the quantity to determine if there is a possibility there is an error in the quantity or in the unit price used in the Engineer's Estimate. If the item appears to be in question, contact the Project Designer/Engineer of Record.

Evaluate high bid items where the quantity is relatively small, the item may be a low productivity item and may, therefore, cost more than a typical weighted average or estimated price. The item should be compared with the other bidder's prices and if it still seems unusual, further analysis is necessary.

Note circumstances where quantity changes could affect the ranking of the bidders if corrections/changes are made to the quantities. If post-award changes are anticipated that would change the ranking of the bidders, it should be recommended that all bids be rejected.

3. Evaluate bids with significant variations from the Engineer's Estimate, among the bidders, or noted in Step 1, review the items having the largest dollar amount differential for jobs with overall bids 15% higher or lower than the Engineer's Estimate. Include in the review, the analysis of the B portion of an A+B Contract when the difference is more than 50%. For contracts with multiple B time periods, evaluate any B time period that is more than 50% below the Engineer's Estimate.



Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obviously unbalanced bid prices are all for items which will occur at the beginning of the contract, and the Contractor defaulted, the Sponsor may be in a difficult position to recover payments made.) Base the analysis on verification of quantities, discussions with the apparent low bidder about whether the general location of the contract is convenient for the apparent low bidder and whether the apparent low bidder will ultimately yield the lowest cost.

Any discussion with the apparent low bidder during procurement is subject to **New York State Procurement Guidelines**, as stated in **Article 11 of New York State Finance Law**. Negotiations with contractors, during the period following the opening of bids and before the award of the contract, shall not be permitted per **23 CFR 635.113(a)**. Discussions should be factual without discussion of the other bids or the Sponsor's contract award intentions. Contacting the apparent low bidder should not be a routine practice. If the low bidder cannot justify the unbalanced item(s), the contract should be considered for rejection. It may be very difficult to justify the removal of the low bidder with a recommendation to award to the second bidder if items are not significantly unbalanced. Once an award recommendation is reached, detailed justification must be provided to the RLPL. Though the bid may not be desirable, it may be acceptable.

When the Sponsor has some objection to the apparent low bidder or needs more time to evaluate qualifications of the apparent low bidder, the RLPL must be notified as soon as possible of the objection with a summary of the justifiable reasons. The RLPL will then notify the NYSDOT MO-Local Programs Bureau via email at: [MO-LocalProgramsBureau@dot.ny.gov](mailto:MO-LocalProgramsBureau@dot.ny.gov). If the Sponsor has concerns with an apparent low bidder, documentation supporting the concerns should be provided to NYSDOT.

### 14.4.3 Reasonableness Justification

When the apparent low bid is more than 15% higher or lower than the Engineers Estimate a reasonable justification is to be included in the bid analysis. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineer's Estimate for specific items and should discuss the apparent reasons such differences exist and any inherent risks. Where lower, the justification should focus on the experience of the apparent low bidder and its ability to complete the contract according to 9 NYCRR 4.170. If it is determined that changes to the Engineer's Estimate would be appropriate based on bid analysis findings, provide descriptions of the revisions to prices for each item that is revised and a revised total of the Engineer's Estimate. All revision descriptions must include dollar amounts and not general statements.

A reasonableness justification shall include all of the following:

1. Consider the structural assessment review performed by the structural designer, if applicable. Justify if the determination does not coincide with the “recommendation to award” by the structural designer.
2. Determine whether the contract can be divided into smaller segments or stages of construction, combined with work in a larger contract, or if there are changes in the contract requirements that can be made to reduce the cost of work or produce more competition.
3. Determine whether a contract is essential and whether the delay resulting from canceling and re-letting would not be in the best public interest. Contracts considered essential include, but are not necessarily limited to safety contracts, which are to correct hazardous conditions to the traveling public, emergency repairs or replacement of damaged facilities.
4. Determine whether a timely award is required to complete staged construction, order materials, coordinate with and to allow other contracts (including other governmental and private contracts) to proceed, meet commitments made by the Sponsor, or to complete a facility in its entirety.
5. Determine if a delay would result in a substantial impact on the contract completion date or extend the contract beyond the contract completion date, over the winter and into the next construction season, thereby increasing the contract cost.
6. Determine whether the general location of the contract is saturated with similar types of construction contracts, thus tending to reduce competition.
7. Determine whether a shortage of construction labor, equipment or specialty capability and experience exists in the contract area, resulting in a general increase in bid prices.
8. Make a recommendation as to whether to award the contract.

#### 14.4.4 Single Bid Analysis

For all contracts where only one bid has been received, the Sponsor should ascertain the potential for increased bidding if the contract were rebid, by examining the list of plan buyers for other potential bidders. Potential bidders should be contacted for their reasons for not bidding. Based on such discussion, determine whether revisions to the contract requirements could result in lower bids through increased competition or clarification of ambiguities. The Sponsor should determine whether the contract is essential and the potential for increased bidding if the contract were to be rebid. The Sponsor will provide the RLPL with the analysis and their determination on how they plan to proceed. The RLPL will review the analysis and provide the Sponsor with an acknowledgment and what steps are necessary. If the Sponsor has proposed to rebid the project, then the RLPL must be advised and concur with the process. The Sponsor will need to provide modified contract bid documents as outlined in LPM Chapter 12 before receiving authorization to re-advertise the project. If the Sponsor has proposed to not rebid based on their analysis and concurrence with the RLPL, the Sponsor will proceed with the award process.

### 14.4.5 Rejection of All Bids

It may be necessary to reject all bids. Reasons to reject all bids are:

- Inadequate competition due to a limited number of bidders,
- High bids due to unclear requirements,
- Bids where additional costs could not be justified; or
- Other circumstances such as permits not being received.

A written discussion provided to the RLPL should include reasons why the Sponsor believes that they will receive better bids if the contract is re-let, or what changes will be made to secure more competitive bid prices, such as the bidding environment or time of the year when the job will be let. If after consultation and written concurrence with NYSDOT, all bids are rejected by the Sponsor, the Sponsor must notify all bidders.

### 14.4.6 Bidder Error

Occasionally a bidder will inadvertently err so severely that it is not reasonable to expect contract fulfillment. **General Municipal Law 103(11)** “Advertising for bids; letting of contracts; criminal conspiracies” sets forth requirements to excuse a bidder for an error in bidding and to proceed to the next lowest responsible bidder:

*Bid mistake, public projects. (a) In all contracts governed by this section, where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer or subdivision in status quo ante. (b) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the awarding officer, board or agency may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.*

### 14.4.7 Move to Second Bidder

On occasion, the Sponsor will proceed to the second bidder. These occasions are:

- Bidder Error as noted in [Section 14.4.6](#).
- Verified documentation determining that the apparent low bidder is not a 'responsible bidder'.
- Documented justification of objection to the apparent low bidder by Sponsor.
- Failure of the apparent low bidder to provide adequate and timely documentation to a Good Faith Effort per Standard Specification 102-12.
- Failure of the apparent low bidder to provide adequate justification to a significantly unbalanced bid proposal.

If the Sponsor moves to the apparent second low bidder, the Sponsor must provide the justification to the RLPL. Once the RLPL has concurred, the Sponsor will complete the bidder responsibility and analysis ([Sections 14.4.1](#) through [14.4.1.3](#)) for the second bidder. Documentation concurring with the move to the second bidder should be provided with the Award package.

## 14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract's DBE participation. There are three distinct stages of DBE participation: goals, commitments, and attainments. Goals are established prior to letting in the contract documents as a percentage of the contract bid price. After contract letting, the goal is expressed as a dollar amount. During the pre-award process, the apparent low bidder provided their agreed-upon DBE commitment as a dollar amount on [Appendix 14-9, Form AAP 14](#). After the contract award, attainment is measured after completion of the work in dollars paid to certified DBEs.

To comply with Federal Aid Civil Rights requirements, NYSDOT utilizes the Civil Rights monitoring and reporting software, Equitable Business Opportunity Solutions (EBO). It is the Sponsor's responsibility during pre-award to confirm that the apparent low bidder has committed to meeting the DBE participation goal or has demonstrated good faith efforts to do so. If the apparent low bidder has not met the goal, a review of good faith efforts (GFE) and concurrence from the RLPL and NYSDOT's Main Office Local Programs Bureau is required. If the apparent low bidder fails to provide DBE commitment or provide a GFE pre-award, the Sponsor can move to the second low bidder.

**Sponsor is responsible for confirming apparent low bidder's commitment to DBE participation goal.**

Sponsors should note that in accordance with **NYSDOT Standard Specifications 105-21 Civil Rights Monitoring and Reporting**, the Contractor must submit timely, accurate and complete data using EBO.

### 14.5.1 Equitable Business Opportunity (EBO)

Project entry into EBO is required during pre-award once the low bidder has been identified. The following steps are to be completed before the submittal of the Award Package to the RLPL and before award of the contract:

1. After the identification of the apparent low bidder, the Sponsor will immediately submit the “Contract Template” (contract’s items, quantities, low bid prices, and apparent low bidder information) to the RLPL, utilizing the **FA DBE EBO Template Construction** and confirm the correct Units of Measure for a seamless upload into the Civil Rights reporting software, EBO.
2. The RLPL will perform a Quality Assurance review on the Contract Template to determine if the header information has been completed and that the units of measure being used are correct. If there are errors, the RLPL will return the template to the Sponsor for correction. The RLPL will submit the completed Contract Template via email to [localprograms.ebo@dot.ny.gov](mailto:localprograms.ebo@dot.ny.gov) for upload into EBO.
3. Main Office Local Programs Bureau will notify the RLPL who will then notify the Sponsor that the Template has been successfully loaded into EBO.
4. The Sponsor will notify the apparent low bidder that the contract has been initialized in EBO.
5. The low bidder must enter their complete DBE participation package in EBO within 5 (five) calendar days from the date of the bid opening, or risk having their bid declared non-responsive.
6. The Sponsor and RLPL must review the pre-award participation data in EBO to confirm that the DBE goal is met.
7. If the DBE goal is not met, the low bidder must provide documentation of Good Faith Efforts (GFE) to the Sponsor. The Sponsor will forward copies and any other additional information, to the RLPL for concurrence with NYSDOT’s Main Office of Civil Rights as detailed in **Section 14.5.2** titled “Good Faith Efforts (GFE).”

The following pre-award participation data in EBO must be reviewed for completeness and accuracy by the Sponsor:

- All proposed DBEs are listed in the **New York State Unified Certification Program (UCP)** Directory.
- All proposed DBEs are listed in the UCP Directory to perform the work that they are being proposed to perform (NOTE: If there are no NYSDOT Work codes indicated on the DBE’s Certification, if NYSDOT work codes do not match the contract pay items, or if they are not being used, then the NAICS codes should be reviewed against the proposed work.)

- All proposed DBE participation is identified with the correct work type such as construction, material supplier, professional services, etc.
- A completed **AAP 22 DBE Material Supplier Commitment Information** form is submitted for each proposed DBE material supplier as part of the award package; this form can be found at **NYSDOT's Office of Construction - Forms**. Information should be entered into EBO.
- A completed **AAP 23 DBE Trucking Commitment Information** form is submitted for each proposed DBE trucking firm as part of the award package; this form can be found at the above website. Information should be entered into EBO.
- All proposed trucking utilization is supported by trucking data entered in EBO.
- All partial items are explained in writing and submitted to RLPL.
- All proposed DBEs acknowledged their respective proposed participation in EBO.

### 14.5.2 Good Faith Efforts (GFE)

If the apparent low bidder does not meet the DBE goal, the apparent low bidder must document that it conducted adequate GFE to achieve the goal.

Once the apparent low bidder has supplied the GFE documentation, the Sponsor will forward copies and any other additional information, to the RLPL for concurrence by NYSDOT's Main Office of Civil Rights. Once NYSDOT's review is complete and the Sponsor notified, the Sponsor shall approve the pre-award DBE participation in EBO and will proceed with its award process.

The Sponsor shall not award the project to the apparent low bidder until concurrence is received from NYSDOT of both the GFE and Award Package. Notice to Proceed issued by the Sponsor to the apparent low bidder prior to NYSDOT issuing Authorization to Proceed without NYSDOT review and concurrence may result in a loss of federal aid.

**The Sponsor shall not award the project until concurrence is received from NYSDOT of both the Award Package and GFE.**

The apparent low bidder should provide a comprehensive GFE package to the Sponsor. The GFE supporting documentation includes, but is not limited to, the following:

- **Form AAP 10 D/M/WBE Solicitation Log.**
- Copies of correspondence, faxes, and e-mails sent to prospective DBEs.
- Copies of advertisements (e.g., newspaper ads).
- Copies of quotes from non-selected DBEs as well as quotes from the selected non-DBEs.

At a minimum, the Sponsor should perform the following analysis for GFE and provide a summary when transmitting to the RLPL:



- Check the DBE certification status of each firm contacted.
- If the firm cannot be found in the UCP Directory, confirm the certification status with the certifying agency responsible for the firm. Never accept copies, faxes, or scans of certification letters.

Compare the work in the contract against:

- Work for which DBEs were solicited.
- Work that the DBEs are listed to perform.
- Compare the location of each DBE firm to ensure an exhaustive search was performed for each item, within an appropriate radius of the project in accordance with **NYS DOT Standard Specification §102-12(G)**.
- Identify available participation opportunities and compare them against the type of work solicited.
- Ensure all types of DBE firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
- Cross-reference letters, faxes, **AAP 10**, etc.

Compare the DBE's price against:

- Engineer's Estimate
- Bid price
- **Weighted Average Item Price Report data**

Where does the DBE's price fall in comparison to all the above:

- Contact a sample of the firms listed on the AAP 10 to verify solicitation effort stated in the solicitation log and other documents:
  - When contacted.
  - By whom.
  - By what method(s).
  - How many times.
  - For what work.
  - Was quote/bid submitted.
  - Were plans provided/made available – how and when?
- Low bidder's follow-through.
- Compare all efforts against **Appendix A, Standard Clauses for NYS Contracts to 49 CFR 26**.

The Sponsor should discuss any document deficiencies with the apparent low bidder. If the Sponsor is satisfied, the documentation is provided to the RLPL for concurrence with the Office of Civil Rights.

If the Sponsor determines that the low bidder did not conduct adequate GFE, it should present its recommendation with this analysis and supporting documentation to its management as well as to the RLPL in a narrative which should include:

- State the specific non-compliance actions.
- Cite the specification and regulation for each non-compliance action or class of actions.
- Provide calculations of the amount achieved toward the DBE goal and the difference.
- Provide an analysis of the feasibility of the DBE goal.
- Provide a timeline or chronology of events.
- Calculations of the difference between the first and second low bidders.
- Any other relevant information.

The Sponsor must follow its administrative process and document its steps and actions. If it is determined that the low bidder did not conduct adequate GFE, the Sponsor may disqualify the low bidder and request from the RLPL concurrence to award to the second low bidder who has successfully met the DBE goal or has submitted sufficient GFE.

The DBE goal is in effect for the duration of the contract. If the DBE goal is not met at the time of award and was awarded based on a GFE, then the Sponsor must ensure Good Faith Efforts are made throughout the life of the contract. The contractor will be required to continue to solicit DBE firms for participation in the contract and document those efforts. The Sponsor will continue collecting the additional GFE documentation from the contractor throughout the duration of the contract, or until the DBE goal is met.

The DBE Attainment Report from EBO shall be submitted with the Sponsor's request(s) for reimbursement. See [LPM Chapter 5](#) for reimbursement instructions.

## 14.6 BRIDGE CONSTRUCTION UNIT COST DATA (IF APPLICABLE)

Annually, all states are required to submit to Federal Highway Administration (FHWA) bridge construction unit costs for all new and replacement bridges constructed using any federal funds. The FHWA requirement does not pertain to bridge rehabilitations, superstructure replacements, or pedestrian bridges.

The Sponsor must provide to the RLPL an itemized bridge share of the construction costs (as submitted by the successful bidder). A separate itemized share is required for each bridge, and only bridge items shall be included. The Engineer's Estimate and other bidder's unit costs should not be included. This data must be provided to NYSDOT when the contract is awarded.



The Bridge Construction Unit Cost Datasheet (see [Appendix 14-2](#) for a sample) must be provided to the RLPL, who forwards them to NYSDOT's Main Office. The collected data is provided to FHWA for their program analysis.

## 14.7 AWARD PACKAGE

NYSDOT delegated oversight authority by FHWA, is responsible for the construction of all Federal-aid projects. When the project is not on the National Highway System or State Highway System, NYSDOT is not relieved of overall project responsibility, thus the Sponsor must submit a Contract Award Package to the RLPL requesting a Concurrence in Award letter.

The following items are to be included in the Contract Award Package (see [Appendix 14-3](#) for the Contract Award Checklist):

- Bid Opening, Verification, and Sponsor Recommendation Letter (see [Appendix 14-1](#)) and attachments.
- Proof of Advertising which consists of the ad from the Contract Reporter, local newspaper, and copies of any other advertisements placed, whether in hard copy or electronic media. (see [LPM Section 14.2 Advertising](#)).
- Copy of all amendments issued:
  - Amendments distribution records showing that all amendments were sent to all plan buyers.
  - A record showing receipt of amendments by plan holders/bidders.
- A list of plan holders.
- Copy of notarized and signed proposal of the verified apparent low bidder.
- Copy of Certificate of Insurances – Workers Compensation and Disability Benefits (see [LPM Chapter 12.3.8](#)).
- Copy of bond and/or bid deposit.
- Signed Non-Collusive Bidding Certification (see [Appendix 12-1.14](#)).
- Signed Disclosure of Lobbying Activities Forms (see [Appendix 12-1.7](#)).
- Copy of the confirmation of an approved CCA-2 New York State Uniform Contracting Questionnaire.
- Certification of apparent low bidder responsibility (see [Section 14.4.1 Bidder Responsibility](#)).
- Bid analysis completed by Sponsor (see [Section 14.4.2](#)).
- Description from the Sponsor concerning how it intends to inspect and provide quality assurance and quality control, as noted in the approved CMP.

- Bridge Construction Unit Cost Data (required for all projects with new or replacement bridges, (see [Appendix 14-2](#)).
- Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) participation ([AAP 33](#) from EBO).
- DBE participation documented on AAP 14 ([Appendix 14-9](#)) – EBO utilized, and DBEs have acknowledged work. The Concurrence of proposed DBE participation by the RLPL prior to award.
- GFE documentation, if the DBE goal appears - the Sponsor cannot award the contract until NYSDOT’s Office of Diversity and Opportunity concurs with the GFE.
- DBE trucking information in EBO if trucking is utilized from EBO.
- DBE Material Supplier Commitment Information ([AAP 22](#)) if DBE material suppliers are utilized.
- DBE Trucking Commitment Information ([AAP 23](#)), if DBE trucking firms are utilized
- Identification of Affirmative Action Representatives in EBO (not required for suppliers)
- Documentation demonstrating that the low bidder met their responsibility for DBE participation when goals were established. See [NYSDOT Contract Administration Manual \(CAM\) §102-12](#) and [LPM Chapter 13 Civil Rights Requirements](#).

Sponsors must submit the Award Package for review prior to the award of the contract in order for the RLPL to conduct their review. RLPL will review and issue a Concurrence in Award letter when all questions and comments have been addressed.

## 14.8 CONTRACT AWARD

Federal aid contracts shall be awarded only based on the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with “Licensing and qualification of contractors per [23 CFR 635.114\(a\)](#). If the award is not completed within 45 days, the contractor may withdraw their bid from consideration as noted in [140 of the State Finance Law](#) and [Section 105 NYS General Municipal Law](#).

**Contracts are awarded based on the lowest responsible bidder.**

The Sponsor must certify in writing that all items in the award documentation package have been addressed and request a Concurrence in Award letter from the RLPL. In support of the Sponsor’s request, the Sponsor must summarize the results of their bid analysis and highlight any irregularities that may have been identified using the Tabulation of Bids (see [Appendix 14-5](#)). The summary must include the bid tabulations of the project, showing bid item details for at least the low three acceptable bids and the total amounts of all other acceptable bids. After receiving

the Concurrence in Award letter from the RLPL, the Sponsor may award the contract, provide notification of the award to the RLPL, and schedule a Pre-Construction Kick-off meeting to which the RLPL needs to attend.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. See **PDM Chapter 4, Table 4-3**. Concurrence in the award is a prerequisite to federal participation in construction costs and, unless specifically stated otherwise, constitutes authority to proceed with construction **23 CFR 635.114(b)**. The Concurrence in Award Letter must be retained as part of the project record by both the Sponsor and the RLPL.

## 14.9 REFERENCES, CHAPTER 14 ADVERTISEMENT, CONTRACT LETTING, AND AWARD

TITLE	LINK
<b>FEDERAL LAWS &amp; REGULATIONS</b>	
<b>23 CFR § 230, External Programs</b>	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-part230.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-part230.xml</a>
<b>23 CFR § 635.104, Method of Construction</b>	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-104.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-104.xml</a>
<b>23 CFR § 635.112, Advertising for Bids and Proposals</b>	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-112.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-112.xml</a>
<b>23 CFR § 635.113(a), Bid Opening and Bid Tabulations</b>	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-113.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-113.xml</a>
<b>23 CFR § 635.114(a) and (b), Award of Concurrence</b>	<a href="#">23 CFR 635.114(a)(b)</a>
<b>49 CFR § 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs</b>	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml">https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml</a>
<b>STATE AND GENERAL MUNICIPAL LAWS &amp; REGULATIONS</b>	
<b>9 New York State Code, Rules, and Regulations (NYCRR) § 4.170, Executive Order No. 170, Establishing Uniform Guidelines for Determining the Responsibility of Bidders</b>	<a href="https://govt.westlaw.com/nycrr/Document/I4efcdfd1cd1711dda432a117e6e0f345?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)&amp;bhcp=1">https://govt.westlaw.com/nycrr/Document/I4efcdfd1cd1711dda432a117e6e0f345?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)&amp;bhcp=1</a>
<b>New York State Finance Law, Chapter 56, Article 9 § 140, Disposition of Deposit Accompanying Bid</b>	<a href="https://www.nysenate.gov/legislation/laws/STF/140">https://www.nysenate.gov/legislation/laws/STF/140</a>
<b>New York State Finance Law, Chapter 56, Article 11, State Purchasing</b>	<a href="https://www.nysenate.gov/legislation/laws/STF/A11">https://www.nysenate.gov/legislation/laws/STF/A11</a>
<b>New York State General Municipal Law, Chapter 24, Article 5-A § 103, Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies</b>	<a href="https://www.nysenate.gov/legislation/laws/GMU/103">https://www.nysenate.gov/legislation/laws/GMU/103</a>

<b>New York State General Municipal Law, Chapter 24, Article 5-A § 103-11,</b> Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies	<a href="https://www.nysenate.gov/legislation/laws/GMU/103">https://www.nysenate.gov/legislation/laws/GMU/103</a>
<b>New York State General Municipal Law, Chapter 24, Article 5-A § 105,</b> Disposition of Deposit Accompanying Bid	<a href="https://www.nysenate.gov/legislation/laws/GMU/105">https://www.nysenate.gov/legislation/laws/GMU/105</a>
<b>New York State Office of General Services, New York State Procurement Guidelines</b>	<a href="https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf">https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf</a>
<b>NYSDOT POLICIES, PROCEDURES, &amp; GUIDANCE</b>	
<b>NYSDOT, Contract Administration Manual (CAM) § 102-12,</b> DBE/MBE/WBE/SDVOB Participation	<a href="https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM_Sect102-12.pdf">https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM_Sect102-12.pdf</a>
<b>NYSDOT, Doing Business with NYSDOT&gt;Construction Contractors</b>	<a href="https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info">https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info</a>
<b>NYSDOT, Federal Aid EBO Template (DBE)</b>	<a href="https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights">https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights</a>
<b>NYSDOT, Local Project Manual (LPM), Chapter 5,</b> Accounting and Reimbursement Procedures	<a href="https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1402">https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1402</a>
<b>NYSDOT, Local Project Manual (LPM), Chapter 12,</b> Construction Contract Requirements	<a href="https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1435">https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1435</a>
<b>NYSDOT, Local Project Manual (LPM), Chapter 13,</b> Civil Rights Requirements	<a href="https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1423">https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1423</a>
<b>NYSDOT, Local Project Manual (LPM), Chapter 15,</b> Administer Construction Contracts	<a href="https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1415">https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1415</a>
<b>NYSDOT, Office of Construction, Forms.</b> (Forms AAP 10, AAP 14, AAP 22, AAP 23, AAP 33 can be found here)	<a href="https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights">https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights</a>
<b>NYSDOT, Project Development Manual (PDM), Chapter 4, Table 4-3,</b> Project Design Phases	<a href="https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm">https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm</a>

<b>NYSDOT, Standard Specifications, § 102-12, D/M/WBE Participation</b>	<a href="https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-9-14english_0.pdf">https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-9-14english_0.pdf</a>
<b>NYSDOT, Standard Specifications, § 105-21, Civil Rights Monitoring and Reporting</b>	<a href="https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-9-14english_0.pdf">https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-9-14english_0.pdf</a>
<b>NYSDOT, Weighted Average Item Price Report Data</b>	<a href="https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr">https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr</a>

**ADDITIONAL RESOURCES**

<b>AASHTOWare Project Preconstruction</b>	<a href="https://www.aashtowareproject.org/apr-precon">https://www.aashtowareproject.org/apr-precon</a>
<b>New York State Comptroller, For Profit Construction Questionnaire (CCA-2)</b>	<a href="https://www.osc.state.ny.us/state-vendors/vendrep/profit-construction-questionnaire-cca-2">https://www.osc.state.ny.us/state-vendors/vendrep/profit-construction-questionnaire-cca-2</a>
<b>New York State Contract Reporter (NYSCR)</b>	<a href="https://www.nyscr.ny.gov/">https://www.nyscr.ny.gov/</a>
Registration Website	<a href="https://www.nyscr.ny.gov/register.cfm">https://www.nyscr.ny.gov/register.cfm</a>
Contact Us Page	<a href="https://www.nyscr.ny.gov/contactUs.cfm">https://www.nyscr.ny.gov/contactUs.cfm</a>
<b>New York State Department of Labor, Debarment List</b>	<a href="https://apps.labor.ny.gov/EDList/searchPage.do">https://apps.labor.ny.gov/EDList/searchPage.do</a>
<b>New York State Department of State, Existing Corporations and Businesses</b>	<a href="https://dos.ny.gov/existing-corporations-and-businesses">https://dos.ny.gov/existing-corporations-and-businesses</a>
<b>New York State Empire State Development (ESD), Procurement Assistance Program, Contact Us</b>	<a href="https://esd.ny.gov/procurement-assistance-program">https://esd.ny.gov/procurement-assistance-program</a>
<b>United States Department of Labor, Occupational Safety and Health Administration, Establishment Search (safety violation search)</b>	<a href="https://www.osha.gov/ords/imis/establishment.html">https://www.osha.gov/ords/imis/establishment.html</a>
<b>United States Department of Labor, Office of Federal Contract Compliance Programs, OFCCP Debarred Companies: List of Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid</b>	<a href="https://www.dol.gov/agencies/ofccp/debarred-list">https://www.dol.gov/agencies/ofccp/debarred-list</a>
<b>New York State Unified Certification Program (UCP) Directory</b>	<a href="https://nysucp.newnycontracts.com/">https://nysucp.newnycontracts.com/</a>

**FOR INFORMATIONAL PURPOSES ONLY-DO NOT USE FOR BIDDING**

**NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS  
BASE BID  
Itemized Proposal for: H61587-71G LIDO BOULEVARD REHABILITATION  
PIN 0761.68  
ITEMIZED PROPOSAL**

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
619.01	LS	1	BASIC WORK ZONE TRAFFIC CONTROL FOR _____				
619.04	EA	32	TYPE III CONSTRUCTION BARRICADE FOR _____				
619.110533	EA	2	(PVMS) STANDARD SIZE - FULL MATRIX (LED) CCTV CAMERA, CELLULAR COMMUNICATION WITH NTCIP COMPLIANCE FOR _____				
621.03	LF	2,900	CLEANING CLOSED DRAINAGE SYSTEMS FOR _____				
621.04	EA	55	CLEANING DRAINAGE STRUCTURES FOR _____				
625.01	LS	1	SURVEY OPERATIONS FOR _____				
633.12	LS	1	CLEANING, SEALING AND/OR FILLING CRACKS FOR _____				

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PIN 0761.68  
ITEMIZED PROPOSAL**

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
635.0103	LF	2,200	CLEANING AND PREPARATION OF PAVEMENT SURFACES- LINES (CONTINGENCY) FOR _____				
637.04	EA	1	CONCRETE CYLINDER CURING EQUIPMENT FOR _____				
637.13	MNTH	18	ENGINEER'S FIELD OFFICE - TYPE 3 FOR _____				
637.34	DC	5,000	OFFICE TECHNOLOGY AND SUPPLIES FOR <u>ONE DOLLAR</u> <u>ZERO CENTS</u> DOLLARS CENTS	1	00		
637.36	DC	100	CONSTRUCTION TESTING SUPPLIES - CONSUMABLES FOR <u>ONE DOLLAR</u> <u>ZERO CENTS</u> DOLLARS CENTS	1	00		
655.05020010	EA	31	FRAMES AND COVERS FOR SANITARY SEWER MANHOLES FOR _____				
655.1202	EA	24	MANHOLE FRAME AND COVER FOR _____				
656.01	LB	31,200	MISCELLANEOUS METALS FOR _____				



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ITEMIZED PROPOSAL**

ITEM NUMBER	UNIT	QTY.	ITEMS OF WORK WITH UNIT PRICES WRITTEN IN WORDS				
680.520203	LF	20	TRAFFIC SIGNAL CONDUIT , FLEXIBLE LIQUID TIGHT STEEL, 1" (CONTINGENCY) FOR _____				
680.54	LF	720	INDUCTANCE LOOP INSTALLATION FOR _____				
680.72	LF	1,620	INDUCTANCE LOOP WIRE FOR _____				
685.03120018	EA	18	RAISED REFLECTORIZED SNOWPLOWABLE PAVEMENT MARKERS (TWO-WAY YELLOW) FOR _____				
685.07200110	LF	32,250	WHITE EPOXY REFLECTORIZED PAVEMENT STRIPES - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				
685.07200210	EA	64	WHITE EPOXY REFLECTORIZED PAVEMENT LETTERS - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				
685.07200310	EA	40	WHITE EPOXY REFLECTORIZED PAVEMENT SYMBOLS - 20 MILS (WET NIGHT VISIBILITY SPHERES) FOR _____				