

INVITATION FOR BIDS

Solicitation No. **69056722B000021**

**MT FWS CMR 61520(1)
Charles M Russell Refuge Repairs**

**This solicitation is a
Total Small Business Set-aside**

See FAR clause 52.219-6 (pg. C-27)

Bid Opening Date:

See Page A-3, Block 13A

QUICK INDEX

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A-1 Notice to Bidders

BID REMINDERS

Electronic bids will not be accepted. Submit printed copy of bid to the address listed on the enclosed SF 1442. Before submitting your bid, please review the following:

- Have you rechecked your bid figures?
- Have you completed the bid schedule?
- Have you completed and signed the *SF 1442, Solicitation, Offer & Award*?
- Have you acknowledged all amendments?
- Have you completed the Representations & Certifications (Page B-1)?
- Is your bid guarantee enclosed in proper form and amount (see FAR Clause 52.228-1), including Power of Attorney affidavit?
- Does the lower left corner of the proposal envelope state "Bid Enclosed"?
- Does the lower left corner include the Solicitation Number and the project number/name?

**Solicitation, Offer & Award, Bid Schedule, Contract Clauses,
General Wage Decision, Special Contract Requirements, and Plans**

This solicitation cites

***Standard Specifications for Construction of Roads and Bridges
on Federal Highway Projects, FP-14***

This project uses U.S. Customary units of measure.

ISSUING OFFICE:



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
610 EAST FIFTH STREET
VANCOUVER, WA 98661-3801
Phone: (360) 619-7520
e-mail : wfl.contracts@dot.gov**

PROJECT No.	MT FWS CMR 61520(1)	
PROJECT NAME	Charles M Russell Refuge Repairs	
	SCHEDULE A	SCHEDULE B
BEGINNING AT	See plans	See plans
LENGTH	N/A	N/A
NATIONAL FOREST	Charles M Russell Wildlife Refuge	
COUNTY	Fergus and Phillips	
STATE	Montana	
FIXED COMPLETION DATE	See FAR Clause 52.211-10 (FAR Clauses begin on page C-1)	

Bid Submittal Checklist

Before submitting your bid, please review the following:	Done?	Is this in the envelope?
Bid Envelope		
Did I correctly address the envelope? (See page A-3, blocks 7 & 8)		
Does the lower left corner of the envelope include the Solicitation Number and the project name/number?		
Pages A-3 & A-4 (SF 1442, Solicitation Offer & Award)		
Did I include our firm name and address in block 14?		
Did I include our firm's phone number in block 15?		
Did I include our firm's remittance address in block 16? (Use when different than block 14)		
Did I include my unique entity identifier and Cage Code?		
Did I include the number & date of <u>all</u> amendments in block 19?		
Did the appropriate official sign/date in block 20A, 20B & 20C?		
Bid Schedule (see page A-7)		
Did I insert "Unit Bid Price" and "Amount Bid" for each bid item?		
Did the appropriate official initial corrections?		
When applicable, did I include the totals for each schedule in the summary page? (See last page of bid schedules.)		
Bid Bond (Standard Form 24)		
<u>Bids received without a valid bid bond will be rejected.</u>		
Did I complete my bid bond correctly?		
Did I include the original?		
Did I attach the Power of Attorney to the bid bond?		
Authority to Sign		
Did I include a completed form for <u>each</u> person signing the SF1442 and Bid Bond?		
Representations & Certifications & FAR Clause		
Did I include the completed B-pages (beginning on B-1)?		
Did I include the completed clause 1252.228-74 <i>Notification of Payment Bond Protection</i> (See page C-124)?		
System for Award Management (SAM) https://www.sam.gov/portal/public/SAM/		
Do we have up-to-date data in SAM?		
Veteran Reporting (FAR Clause 52.222-37)		
If applicable, did I ensure our firm has completed this annual report?		

NOTE: The Contractor is fully responsible to verify that all data is correct each time a bid package is submitted. Failure to properly input and/or update your data may cause the bid to be rejected.

Driving Directions to our Vancouver Washington Office:
[Directions to WFLHD](#)

INSTRUCTIONS: When the offeror/principal is a corporation, include this certification with your offer/bid.

Corporate Certificate

I, _____ (name), certify that I am the

_____ (title), of the corporation named as

the Offeror/Principal herein;

that _____ (name), who signed this

offer and/or bid bond on behalf of _____ (company name) is

_____ (title) of this corporation;

that the offer was duly signed for and on behalf of said corporation by authority and

scope of its governing body, and within the scope of its corporate powers.

_____ (signature)

Affix Corporate Seal

_____ (title)

INSTRUCTIONS: When the offeror/principal is a limited liability company, include this certification with your offer/bid.

Limited Liability Certificate

I, _____ (name), certify that I am the

(title), of the limited liability company
named as the Offeror/Principal herein;

that _____ (name), who signed this
offer and/or bid bond on behalf of _____ (company name) is

(title) of this company;

that the offer was duly signed for and on behalf of said company by authority and
scope of its governing body, and within the scope of its powers.

(signature)

(title)

Affix Company Seal
(as applicable)

INSTRUCTIONS: When the offeror/principal is a partnership, include this certification with your offer/bid.

Authority to Bind Partnership

This certifies that the names and signatures of all partners are listed below, and that the person signing the proposal has the authority to actually bind the partnership pursuant to its partnership agreement. Each of the partners individually has full authority to enter into and execute contractual instruments on behalf of said partnership, except as follows:

(State "None" or describe limitations, if any)

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all partners)

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INSTRUCTIONS: When the offeror/principal is a joint venture, include this certification with your offer/bid.

Authority to Bind Joint Venture

This certifies that the person signing the proposal has the authority to actually bind the joint venture pursuant to its joint venture agreement, and that each of the named persons listed below individually has full authority to enter into and execute contractual instruments on behalf of said joint venture, except as follows:

(State "None" or describe limitations, if any)

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all applicable individuals)

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INSTRUCTIONS: When the offeror/principal is a sole proprietorship, the signature on the offer/bid and on the bonds must be as follows:

Sole Proprietorship Requirement

An Offeror/Principal that is a sole proprietorship must submit an offer/bid and a bond signed by the sole proprietor, or by one duly authorized to sign for the sole proprietor. If the signature is by someone other than the sole proprietor, a copy of the power of attorney authorizing the individual to sign must be provided with the offer/bid.

BID BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB Control Number: 9000-0045 Expiration Date: 8/31/2025
Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 1 hour to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.		
PRINCIPAL <i>(Legal name and business address)</i>		TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i>
		STATE OF INCORPORATION
SURETY(IES) <i>(Name and business address)</i>		

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NUMBER 69056722B000021
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR <i>(Construction, Supplies or Services)</i>	Construction: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
	(Seal)	(Seal)	(Seal)		
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.			
	(Seal)	(Seal)			
NAME(S) <i>(Typed)</i>	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS	STATE OF INCORPORATION		LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

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SPECIAL CONTRACT REQUIREMENTS (SCR)

The following Special Contract Requirements amend and supplement the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-14)*, U.S. Department of Transportation, Federal Highway Administration.

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NOTICE TO BIDDERS

06/15/22-FP14

THIS PROJECT IS BEING SOLICITED AND AWARDED UNDER FP-14.

The FP-14 is FLH's *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects*. To view the FP-14 electronically go to:

<https://highways.dot.gov/federal-lands/specs>.

The FP-14 is a dual unit document with U.S. Customary units being the primary unit shown. Metric equivalents are shown in parenthesis.

When submitting bids, drawings, calculations, and other construction documents, use only U.S. Customary units of measure, unless otherwise stated.

I. Project Location

General Location. The project work is located in the CMR Wildlife Refuge approximately 72 miles northeast of Lewistown in Fergus, and Phillips Counties. Approximate Global Positioning System (GPS) coordinates for Siparyann Creek – 47°37'18.41"N 108°32'4.18"W, Rock Creek – 47°36'45.35"N 108°28'28.80"W, Seven Mile – 47°35'32.20"N 108°18'0.09"W, Nichols – 47°35'30.52"N 108°13'57.92"W, Sand Creek – 47°35'50.1"N 108°30'53.72"W.

Project Limits. Signs have not been erected to identify the project limits. No Government personnel will be available for show-me tours.

II. Pre-bid Information.

GENERAL AND TECHNICAL QUESTIONS REGARDING PROPOSED WORK FOR THIS PROJECT WILL BE ACCEPTED UNTIL CLOSE-OF-BUSINESS ON 12/06/2022.

Refer to page A-5 for information on how to submit questions related to General Information and Technical Information. Answers to General and Technical Questions will be posted at <https://sam.gov/opp/fc853c3cf4404197b7ae5390fdd1afdc/view>.

Every attempt to respond to questions will be made. However, response to questions received after the above posted date is not guaranteed.

Multiple Schedules. Bids for the construction of this project are being invited under two bid schedules, designated A and B. Schedule A and Schedule B are not alternate bids. Complete both schedules according to Subsection 102.02 of the special contract requirements. Award of the contract will be made according to Subsection 102.05A.

Notice to BIDDERS

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

Electronic Plan Sheets. This solicitation includes electronic plan sheets available at <https://sam.gov/opp/fc853c3cf4404197b7ae5390fdd1afdc/view>. A paper copy of the plan sheets is available by submitting the form posted with this solicitation.

Physical Data. Physical data applicable to this project is listed in FAR Clause 52.236-4 *Physical Data*.

Small Business Set-Aside. This solicitation is a total small business set-aside. Offers are solicited only from small business concerns; see FAR Clause 52.219-6 *Notice of Total Small Business Set-Aside* (clauses begin on page C-1).

Representations & Certifications. Submit or update Representations and Certifications online at <https://www.sam.gov/SAM/> before bid submittal. For more details go to FAR Provision 52.204-8 *Annual Representations and Certifications* (see page B-2.). If you have previously registered on-line and the NAICS code for this solicitation is different than the code listed in your online file, please note the amended changes on the lines provided in FAR 52.204-8.

Requests for Information. Requests for technical information (Plan and Division 100 – 700 Specification questions only) about this project will only be accepted in writing (see Block 9 on page A-5).

SF 1442, Solicitation, Offer, and Award. Particular attention should be paid to Standard Form 1442, Solicitation, Offer and Award, to assure that Blocks 14, 15, 16, 19, 20A, and 20C are completed correctly. Sign Block 20B according to the instructions in Subsection 102.02. You must submit a completed ‘Authority to Sign’ document. You must also complete the representations and certifications contained in the Contract Provisions beginning on page B-1. Failure to furnish or complete any of the above may result in your bid being considered nonresponsive and being rejected.

Facsimile and email bids, modifications, and withdrawals. Facsimile and email bids are not authorized for this solicitation. Bids may be modified or withdrawn by email, if such notice is received by the time specified for receipt of bids. The Government will not be responsible for any failure attributable to the transmission or receipt of email data. See FAR Provision 52.214-5, *Submission of Bids*. EMAIL WFL.Contracts@dot.gov. To confirm receipt, call 360.619.7520.

Surety Bond Guarantee Program. Small businesses that need surety bonds can qualify for U.S. Small Business Administration (SBA) backed surety bonds. SBA assistance in locating a participating surety company or agent, and completing application forms is available online. For more information on the U.S. SBA’s Surety Bond Guarantee program, go online to <http://www.sba.gov/content/contractors> or call 1-800-U-ASK-SBA.

Fraud Alert. Current and potential U.S. Department of Transportation (DOT) Contractors have recently been receiving fraudulent letters purporting to be issued by DOT. These fraudulent letters request that the Contractors resubmit their banking information to DOT. If you receive such a letter, please DO NOT complete the requested worksheet that is attached to the letters and DO NOT release any information. To register or update information, Contractors are required to go directly through the System for Award Management (SAM) website and never through a third party. You can access SAM at <https://www.sam.gov/SAM/>.

COVID-19 Site Access Constraints. There may be access constraints related to the COVID-19 Pandemic. If you are intending to submit a Bid and are unable to visit the sites because of access constraints related to the COVID-19 Pandemic, please let us know.

III. Post Award Information.

Insurance. Insurance requirements are described in Subsection 107.05.

Contractor Performance Evaluations. This office posts performance evaluations in the *Contractor Performance Assessment Reporting System (CPARS)*; for additional information, see <http://www.cpars.gov/index.htm>. Upon receiving an email notice of evaluation availability, you will have 14-60 days to review the evaluation online and submit comments. If you are unable to access the system, call 360.619.7520 for assistance or for a copy of the evaluation.

IV. Specifications and Permits.

Specifications. This solicitation and subsequent contract are governed by the *Federal Acquisition Regulation (FAR)*, agency supplemental regulations, and the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14*. An electronic version may be found at <https://highways.dot.gov/federal-lands/specs>. A single paper copy can also be obtained from the Research & Technology Product Distribution Center (RTPDC) by e-mail to: report.center@dot.gov, or by phone 814-239-1160, or fax 814-239-2156.

Electronic Documentation. Requires all documents (including but not limited to correspondence, notifications, submittals, reports, and pay notes) to be submitted in a pdf format, or an approved fixed-layout electronic format. See Subsection 103.06.

Material Sources. Material sources, water sources, staging areas, stockpile areas and waste areas have not been identified for this project. Secure all permits and clearances for Contractor-located sites and sources. See Subsection 105.02(c).

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SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)		1. SOLICITATION NO. 69056722B000021	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 11/09/2022	PAGE OF PAGES 1 2
IMPORTANT -- The "offer" section on the reverse must be fully completed by offeror.					
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.		6. PROJECT NO.	
7. ISSUED BY Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661		CODE 690567	8. ADDRESS OFFER TO Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661		
9. FOR INFORMATION CALL:	a. NAME ACQUISITIONS		b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 360-619-7520		

SOLICITATION**NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."**

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date)

This solicitation is designated MT FWS CMR 61520(1), Charles M Russell Refuge Repairs.

IN STRICT ACCORDANCE WITH:

- Federal Acquisition Regulations (FAR) and Transportation Acquisition Regulations (TAR)
- General Wage Decision
- Special Contract Requirements
- *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects*, FP-14

11. The Contractor shall begin performance <u>10</u> calendar days and complete it within <u>*</u> calendar days after receiving <u>* Page A-5</u>	
<input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. The performance period is <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See <u>Page A-5</u> .)	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES", indicate within how many calendar days after award in Item 12b.)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
12b. CALENDAR DAYS 10	
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
a. Sealed offers in original and <u>0</u> copies to perform the work required are due at the place specified in Item 8 by <u>12/13/2022</u> (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
b. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
d. Offers providing less than <u>60</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
	16. REMITTANCE ADDRESS (Include only if different than item 14.)

Unique Entity Identifier (SAM.gov) :
Cage Code:

CODE	FACILITY CODE
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17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in item 13d. Failure to insert any number means the offeror accepts the minimum in item 13d.)

AMOUNTS

See bid schedule.

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGEMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NO.										
DATE.										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	20b. SIGNATURE	20c. OFFER DATE
--	----------------	-----------------

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

All items on bid schedule.

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
------------	---------------------------------------

24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM See Page A-5	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()
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26. ADMINISTERED BY CODE 690567 Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661	27. PAYMENT WILL BE MADE BY Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661
---	--

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations,	<input checked="" type="checkbox"/> 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
---	--

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31a. NAME OF CONTRACTING OFFICER (Type or print)
30b. SIGNATURE	ANDRES ARREDONDO
30c. DATE	31b. UNITED STATES OF AMERICA
	BY
	31c. DATE

Block 9 **FOR GENERAL INFORMATION**, call **360.619.7520** from the hours of 8:00 a.m. to 4:00 p.m. local time or e-mail us at wfl.contracts@dot.gov.

FOR TECHNICAL INFORMATION (plan and specification questions only), requests for technical information about this project will only be accepted in writing. Submit questions via e-mail at wfl.plans-spec@dot.gov.

QUESTIONS/ANSWERS POSTED ONLINE. You can view questions and answers on the Contract Opportunities Website: www.sam.gov.

- Insert the solicitation number in search box.
- Scroll to the project.
- Make sure you are on the most recent view and look in the right section of the page for the most recent Q&A document.

FOR DAVIS-BACON WAGE RATE INFORMATION call the Department of Labor at **415.625.7716 (DRBA - Western Region)**

FOR PHYSICAL DATA, See FAR Contract Clause 52.236-4, Physical Data, (clauses begin on page C-1) for a listing of available data. Physical Data will be posted with the solicitation on the Federal Business Opportunities website.

FOR BID RESULTS, Bid opening summary will be posted on the Contract Opportunities Website (www.sam.gov) shortly after bid opening. Bid tabulations will be available on www.sam.gov approximately 3 work days after the bid opening.

Block 11 **COMPLETION DATE:** Work shall be completed on or before the date specified in FAR Clause 52.211-10, *Commencement, Prosecution, and Completion of Work*, subject to such extensions as may be authorized by the terms of the contract and the specifications made a part thereof. Contract Clauses begin on pages C-1.

Block 12A **PERFORMANCE & PAYMENT BONDS:** See FAR Clause, 52.228-15, *Performance and Payment Bonds - Construction* (clauses begin on page C-1) and Subsection 102.06 of the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14, U.S. Customary Units*.

Block 13B **BID BOND AMOUNT:** See FAR Clause 52.228-1, Bid Guarantee (clauses begin on page C-1).

ADDITIONAL INFORMATION: See Subsections 102.03 and 102.04 of *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14, U.S. Customary Units*.

Block 24 **SUBMITTING INVOICES:** See Subsection 109.08 of the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP-14, U.S. Customary Units*.

ESTIMATED PRICE RANGE. The price range of the project work is between **\$2,000,000** and **\$3,000,000**.

BID SCHEDULE

Bidder/Offeror please note: Before preparing the bid, carefully read the Solicitation Provisions.

Insert a unit bid price, in figures, for each pay item for which a quantity appears in the bid schedule. Multiply the unit price by the quantity for each pay item and show the amount bid. Should any mathematical check made by the Government show a mistake in the amount bid, the corrected unit price extension shall govern.

When the word "LPSM" (Lump Sum) appears as a unit bid price, insert an amount for each lump sum pay item.

When a sum based on a fixed rate appears for any pay item in the amount bid column, include the Government inserted amount bid for the item in the total bid amount.

Total all of the amounts bid for each pay item and show the total bid amount.

Item No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount
A0020	15101-0000	MOBILIZATION				
			ALL	LPSM	\$__LPSM__	\$__
A0040	15201-0000	CONSTRUCTION SURVEY AND STAKING				
			ALL	LPSM	\$__LPSM__	\$__
A0060	15301-0010	CONTRACTOR QUALITY CONTROL AND ASSURANCE				
			ALL	LPSM	\$__LPSM__	\$__
A0080	15401-0000	CONTRACTOR TESTING				
			ALL	LPSM	\$__LPSM__	\$__
A0100	15501-0000	CONSTRUCTION SCHEDULE				
			ALL	LPSM	\$__LPSM__	\$__
A0120	15705-0100	SOIL EROSION CONTROL, SILT FENCE				
			1,110	LNFT	\$__	\$__
A0140	15705-1400	SOIL EROSION CONTROL, FIBER ROLL				
			410	LNFT	\$__	\$__
A0160	15706-0200	SOIL EROSION CONTROL, CHECK DAM				
			4	EACH	\$__	\$__
A0180	20101-0000	CLEARING AND GRUBBING				
			1.0	ACRE	\$__	\$__
A0200	20301-1900	REMOVAL OF PIPE CULVERT				
			2	EACH	\$__	\$__
A0220	20401-0000	ROADWAY EXCAVATION				
			105	CUYD	\$__	\$__
A0240	20410-0000	SELECT BORROW				
			2,500	CUYD	\$__	\$__
A0260	20701-0700	SEPARATION-STABILIZATION GEOTEXTILE, CLASS 2, TYPE B				
			530	SQYD	\$__	\$__
A0280	25101-0100	PLACED RIPRAP, METHOD A, CLASS 1				
			20	CUYD	\$__	\$__

Bid Schedule

Schedule:A

Schedule Type:Alternate

Project No:MT FWS CMR 61520(1)

Project Name:Charles M Russell Refuge Repairs

A0300	25101-0300	PLACED RIPRAP, METHOD A, CLASS 3	670	CUYD	\$ _____	\$ _____
A0320	30201-1000	ROADWAY AGGREGATE, METHOD 1	350	CUYD	\$ _____	\$ _____
A0340	50101-0600	MINOR CONCRETE PAVEMENT, REINFORCED, 6-INCH DEPTH	660	SQYD	\$ _____	\$ _____
A0360	55201-0200	STRUCTURAL CONCRETE, CLASS A (AE) (ABUTMENTS)	43	CUYD	\$ _____	\$ _____
A0380	55210-0400	PRECAST STRUCTURAL CONCRETE, CLASS A(AE), ABUTMENT (PILE CAP)	18	CUYD	\$ _____	\$ _____
A0400	55210-0400	PRECAST STRUCTURAL CONCRETE, CLASS A(AE), ABUTMENT (BACKWALL AND WINGWALLS)	6	CUYD	\$ _____	\$ _____
A0420	55401-1000	REINFORCING STEEL	4,100	LB	\$ _____	\$ _____
A0440	55504-0000	PRE-FABRICATED STEEL BRIDGE (ROCK CREEK)	ALL	LPSM	\$ __LPSM__	\$ _____
A0460	55504-0000	PRE-FABRICATED STEEL BRIDGE (SAND CREEK)	ALL	LPSM	\$ __LPSM__	\$ _____
A0480	56701-0000	MICROPILE	490	LNFT	\$ _____	\$ _____
A0500	56706-0000	MICROPILE PROOF LOAD TEST	2	EACH	\$ _____	\$ _____
A0520	60201-1000	36-INCH PIPE CULVERT	220	LNFT	\$ _____	\$ _____
A0540	60202-0900	54-INCH EQUIVALENT DIAMETER ARCH OR ELLIPTICAL PIPE CULVERT	50	LNFT	\$ _____	\$ _____

Bid Schedule

Schedule:A

Schedule Type:Alternate

Project No:MT FWS CMR 61520(1)

Project Name:Charles M Russell Refuge Repairs

A0560	60202-1400	84-INCH EQUIVALENT DIAMETER ARCH OR ELLIPTICAL PIPE CULVERT	55	LNFT	\$_____	\$_____
A0580	63302-0000	SIGN SYSTEM	60	SQFT	\$_____	\$_____
A0600	63316-1000	REMOVE AND RESET SIGN	3	EACH	\$_____	\$_____
A0620	63502-0600	TEMPORARY TRAFFIC CONTROL, BARRICADE TYPE 3	7	EACH	\$_____	\$_____
A0640	63504-1000	TEMPORARY TRAFFIC CONTROL, CONSTRUCTION SIGN	172	SQFT	\$_____	\$_____
A0660	63507-0700	TEMPORARY TRAFFIC CONTROL, TRAFFIC CONTROL SUPERVISOR	84	DAY	\$_____	\$_____
A0680	64704-1000	MITIGATION, STREAMBED MATERIAL	161	CUYD	\$_____	\$_____
<div>Submitted by:_____</div> <div>Schedule Total:_____</div>						

Item No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount
B0020	15101-0000	MOBILIZATION				
			ALL	LPSM	\$__LPSM__	\$__
B0040	15201-0000	CONSTRUCTION SURVEY AND STAKING				
			ALL	LPSM	\$__LPSM__	\$__
B0060	15301-0010	CONTRACTOR QUALITY CONTROL AND ASSURANCE				
			ALL	LPSM	\$__LPSM__	\$__
B0080	15401-0000	CONTRACTOR TESTING				
			ALL	LPSM	\$__LPSM__	\$__
B0100	15501-0000	CONSTRUCTION SCHEDULE				
			ALL	LPSM	\$__LPSM__	\$__
B0120	15705-0100	SOIL EROSION CONTROL, SILT FENCE				
			1,110	LNFT	\$__	\$__
B0140	15705-1400	SOIL EROSION CONTROL, FIBER ROLL				
			930	LNFT	\$__	\$__
B0160	15706-0200	SOIL EROSION CONTROL, CHECK DAM				
			4	EACH	\$__	\$__
B0180	20101-0000	CLEARING AND GRUBBING				
			1.3	ACRE	\$__	\$__
B0200	20301-1900	REMOVAL OF PIPE CULVERT				
			3	EACH	\$__	\$__
B0220	20401-0000	ROADWAY EXCAVATION				
			110	CUYD	\$__	\$__
B0240	20410-0000	SELECT BORROW				
			2,500	CUYD	\$__	\$__
B0260	20701-0700	SEPARATION-STABILIZATION GEOTEXTILE, CLASS 2, TYPE B				
			1,700	SQYD	\$__	\$__
B0280	25101-0100	PLACED RIPRAP, METHOD A, CLASS 1				
			30	CUYD	\$__	\$__

Bid Schedule

Schedule:B

Schedule Type:Alternate

Project No:MT FWS CMR 61520(1)

Project Name:Charles M Russell Refuge Repairs

B0300	25101-0300	PLACED RIPRAP, METHOD A, CLASS 3	1,300	CUYD	\$ _____	\$ _____
B0320	30201-1000	ROADWAY AGGREGATE, METHOD 1	400	CUYD	\$ _____	\$ _____
B0340	50101-0600	MINOR CONCRETE PAVEMENT, REINFORCED, 6-INCH DEPTH	660	SQYD	\$ _____	\$ _____
B0360	55201-0200	STRUCTURAL CONCRETE, CLASS A (AE) (ABUTMENTS)	43	CUYD	\$ _____	\$ _____
B0380	55210-0400	PRECAST STRUCTURAL CONCRETE, CLASS A(AE), ABUTMENT (PILE CAP)	18	CUYD	\$ _____	\$ _____
B0400	55210-0400	PRECAST STRUCTURAL CONCRETE, CLASS A(AE), ABUTMENT (BACKWALL AND WINGWALLS)	6	CUYD	\$ _____	\$ _____
B0420	55401-1000	REINFORCING STEEL	4,100	LB	\$ _____	\$ _____
B0440	55504-0000	PRE-FABRICATED STEEL BRIDGE (ROCK CREEK)	ALL	LPSM	\$ __LPSM__	\$ _____
B0460	55504-0000	PRE-FABRICATED STEEL BRIDGE (SAND CREEK)	ALL	LPSM	\$ __LPSM__	\$ _____
B0480	56701-0000	MICROPILE	490	LNFT	\$ _____	\$ _____
B0500	56706-0000	MICROPILE PROOF LOAD TEST	2	EACH	\$ _____	\$ _____
B0520	60201-1000	36-INCH PIPE CULVERT	630	LNFT	\$ _____	\$ _____
B0540	60201-1200	48-INCH PIPE CULVERT	290	LNFT	\$ _____	\$ _____

Bid Schedule

Schedule:B

Schedule Type:Alternate

Project No:MT FWS CMR 61520(1)

Project Name:Charles M Russell Refuge Repairs

B0560	60202-0900	54-INCH EQUIVALENT DIAMETER ARCH OR ELLIPTICAL PIPE CULVERT	50	LNFT	\$ _____	\$ _____
B0580	60202-1400	84-INCH EQUIVALENT DIAMETER ARCH OR ELLIPTICAL PIPE CULVERT	55	LNFT	\$ _____	\$ _____
B0600	61921-1000	REMOVE AND RESET FENCE	125	LNFT	\$ _____	\$ _____
B0620	62201-0250	DUMP TRUCK, 10 CUBIC YARD MINIMUM CAPACITY	20	HOUR	\$ _____	\$ _____
B0640	62201-0450	BACKHOE LOADER, 4 CUBIC FOOT MINIMUM RATED CAPACITY BUCKET, 18-INCH WIDTH	20	HOUR	\$ _____	\$ _____
B0660	62301-0000	GENERAL LABOR	20	HOUR	\$ _____	\$ _____
B0680	63302-0000	SIGN SYSTEM	60	SQFT	\$ _____	\$ _____
B0700	63316-1000	REMOVE AND RESET SIGN	3	EACH	\$ _____	\$ _____
B0720	63502-0600	TEMPORARY TRAFFIC CONTROL, BARRICADE TYPE 3	7	EACH	\$ _____	\$ _____
B0740	63504-1000	TEMPORARY TRAFFIC CONTROL, CONSTRUCTION SIGN	172	SQFT	\$ _____	\$ _____
B0760	63507-0700	TEMPORARY TRAFFIC CONTROL, TRAFFIC CONTROL SUPERVISOR	84	DAY	\$ _____	\$ _____
B0780	64704-1000	MITIGATION, STREAMBED MATERIAL	161	CUYD	\$ _____	\$ _____

Bid Schedule

Schedule:B

Schedule Type:Alternate

Project No:MT FWS CMR 61520(1)

Project Name:Charles M Russell Refuge Repairs

Submitted by:_____

Schedule Total:_____

BID SCHEDULE SUMMARY

SCHEDULE	SCHEDULE AMOUNT
Schedule A (Pages A-8 through A-10)	\$ _____
Schedule B (Pages A-11 through A-14)	\$ _____

Submitted by: _____

FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS

Representations, Certifications and Other Statements of Bidders

The bidder makes the following representations and certifications as a part of its bid.

52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (Jan 2017)

(a) Definition.

“Internal confidentiality agreement or statement,” “subcontract,” and “subcontractor”, as used in this provision, are defined in the clause at [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

(b) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds appropriated (or otherwise made available) for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(c) The prohibition in paragraph (b) of this provision does not contravene requirements applicable to Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

Completing FAR provision 52.204-8 Annual Representation and Certifications.

- This solicitation is issued under NAICS 237310 – Highway, Street & Bridge Construction with a small business size standard of \$39.5 million. If your average annual gross receipts for the past 3 years are above \$39.5 million you are a large business for this solicitation. If they are below \$39.5 million you are a small business. Please complete the certification listed in paragraph (d).
- Before submitting bids, please ensure you have completed your annual representations and certifications electronically at the System for Award Management (SAM) website: <https://www.sam.gov/SAM/>

52.204-8 Annual Representations and Certifications. (MAY 2022)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is *NAICS 237310 – Highway, Street & Bridge Construction*.

(2) The small business size standard is *\$39.5 million*.

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees if the acquisition—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b)

(1) If the provision at [52.204-7](#), System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at [52.204-7](#), System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

(i) ☐ Paragraph (d) applies.

(ii) ☐ Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.203-18](#), Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation. This provision applies to all solicitations.

(iv) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.

(v) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that-

- (A) Are not set aside for small business concerns;
- (B) Exceed the simplified acquisition threshold; and
- (C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) [52.204-26](#), Covered Telecommunications Equipment or Services-Representation. This provision applies to all solicitations.

(vii) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation.

(viii) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) [52.209-11](#), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) [52.214-14](#), Place of Performance-Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) [52.219-1](#), Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied [part 19](#) in accordance with [19.000\(b\)\(1\)\(ii\)](#).

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied [part 19](#) in accordance with [19.000\(b\)\(1\)\(ii\)](#).

(xiv) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xv) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xvi) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

(xvii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xix) [52.223-22](#), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation. This provision applies to solicitations that include the clause at [52.204-7](#).)

(xx) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xxi) [52.225-4](#), Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.

(D) If the acquisition value is \$92,319 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xxiii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan-Certification. This provision applies to all solicitations.

(xxiv) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxv) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

___ (i) [52.204-17](#), Ownership or Control of Offeror.

___ (ii) [52.204-20](#), Predecessor of Offeror.

___ (iii) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

___ (iv) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

___ (v) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

___ (vi) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA–Designated Products (Alternate I only).

___ (vii) [52.227-6](#), Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

___ (viii) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically in SAM website accessed through <https://www.sam.gov>. After reviewing the SAM information, the

offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause # Title Date Change	
52.219-1 Small Business Program Representation	Under this NAICS code I represent we () Are () Are Not a small business.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

52.204-16 Commercial and Government Entity Code Reporting (Aug 2020)

(a) *Definition.* As used in this provision –

Commercial and Government Entity (CAGE) code means–

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall provide its CAGE code with its offer with its name and location address or otherwise include it prominently in its proposal. The CAGE code must be for that name and location address. Insert the word “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via–

(1) Registration in the System for Award Management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) *The DLA Contractor and Government Entity (CAGE) Branch.* If registration in SAM is not required for the subject procurement, and the Offeror does not otherwise register in SAM, an Offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://cage.dla.mil>.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <https://cage.dla.mil>.

(e) When a CAGE code is required for the immediate owner and/or the highest-level owner by Federal Acquisition Regulation (FAR) [52.204-17](#) or [52.212-3](#)(p), the Offeror shall obtain the respective CAGE code from that entity to supply the CAGE code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

(g) If the solicitation includes FAR clause [52.204-2](#), Security Requirements, a subcontractor requiring access to classified information under a contract shall be identified with a CAGE code on the DD Form 254. The Contractor shall require a subcontractor requiring access to classified information to provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

52.209-7 Information Regarding Responsibility Matters (Oct 2018)

(a) *Definitions.* As used in this provision—

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than \$10,000,000" means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance

and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

- (i) In a criminal proceeding, a conviction.
 - (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (iii) In an administrative proceeding, a finding of fault and liability that results in—
 - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
 - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.
 - (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.
- (2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

52.209-13 Violation of Arms Control Treaties or Agreements--Certification (NOV 2021)

(a) This provision does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products and commercial services as defined in Federal Acquisition Regulation [2.101](#).

(b) *Certification.* [Offeror shall check either (1) or (2).]

— (1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act ([22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and

Disarmament Act ([22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; or

— (2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to NDAA1290Cert@state.gov. To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has

- (i) Waived application under [22 U.S.C. 2593e](#)(d) or (e); or
- (ii) Determined under [22 U.S.C. 2593e](#)(g)(2) that the entity has ceased all activities for which measures were imposed under [22 U.S.C. 2593e](#)(b).

(e) *Remedies*. The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later

determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (Feb 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) 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, are as follows:

Goals for Minority Participation for Each Trade: 4.1%

Goals for Female Participation for Each Trade: 6.9%

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered areas" are Fergus and Phillips counties, Montana.

52.225-10 Notice of Buy American Requirement—Construction Materials (May 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "domestic construction material," and "foreign construction material," as used in this

provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-9](#)).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations

USE OF RECOVERED MATERIALS ON FEDERAL LANDS HIGHWAY PROJECTS

Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6901 *et seq.*), requires Federal, State, and local procuring agencies using appropriated Federal funds to purchase items composed of the highest percentage of recovered materials practical. Use of recovered materials is strongly encouraged on Federal Lands Highway Projects. Highway construction items covered by the Environmental Protection Agency's *Comprehensive Guidelines for Procurement of Products Containing Recovered Materials* include fly ash, ground granulated blast furnace slag, traffic barricades, traffic cones, hydraulic mulch and compost for mulch.

Use of **fly ash** and ground **granulated blast furnace slag** and construction materials containing fly ash and ground granulated blast furnace slag on Federal Lands Highway Projects:

- It is the policy of the United States Government that fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag shall have maximum practicable opportunity for incorporation into its construction projects.
- The Contractor agrees to investigate the use of fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag to the fullest extent consistent with the efficient performance of this contract. Both the contractor and the subcontractors are urged to seek out suppliers of fly ash and ground granulated blast furnace slag, cement and concrete containing fly ash and ground granulated blast furnace slag and to solicit bids for these materials.
- Names of firms that supply fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag are available from the American Coal Ash Association and the National Slag Association.

THE FOLLOWING IS NOT A SOLICITATION PROVISION

PARTNERING

A Partnership recognizes the Government and the Contractor are both responsible for and can affect the successful completion of this project. Partnering is a vehicle to ensure the partnership has structure and quality. It recognizes the strengths of each party and uses those strengths to identify and achieve shared goals. One of the primary objectives of Partnering is to facilitate the resolution of disputes in a timely, professional, and non-adversarial manner with the outcome focused on achieving those shared goals.

WFLHD supports the concepts and tenets of Partnering and as such is encouraging the Contractor and it's Subcontractors to establish a Partnering relationship on this project.

Partnering can be formal or informal.

A formal Partnering meeting can help facilitate this relationship by helping to document the parties' common purpose and goals, and ensuring alignment. The goals are mutually agreed to and address effective and efficient performance within the scope of the contract.

Participation in a formal Partnering meeting is voluntary. Costs of implementing and maintaining the partnership would be agreed to by both parties and shared equally. These costs would be in addition to the contract amount.

An informal Partnering meeting can help facilitate this relationship by improving communication and encouraging cooperation. The substance of an informal Partnering meeting would be determined by mutual agreement prior to or at the preconstruction conference.

Participation in an informal Partnering meeting is voluntary. Costs of implementing and maintaining the partnership would be the responsibility of the party incurring the cost.

Please indicate your desire to participate in Partnering meeting by selecting one of the options below.

- ☐ We would like to participate in a formal Partnering meeting.
- ☐ We would like to participate in an informal Partnering meeting.
- ☐ We do not want to participate in a Partnering meeting.

COMPANY CONTACT INFORMATION

Please list your company's primary contact for this solicitation.

Name: _____

Title: _____

Email: _____

Phone: _____

FAX: _____

FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS

Instructions, Conditions, and Notices to Bidders

52.204-7 System for Award Management (Oct 2018)

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company Physical Street Address, City, State, and Zip Code.
- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.

- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).
- (d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

(a) *Definitions.* As used in this provision—

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of

any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It ☐ will, ☐ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It ☐ does, ☐ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

52.204-26 Covered Telecommunications Equipment or Services-Representation.. (Oct 2020)

(a) Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c)

(1) Representation. The Offeror represents that it ☐ does, ☐ does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it ☐ does, ☐ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29 (Aug 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407
Telephone: (202) 619-8925
Facsimile: (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988)

The specifications cited in this solicitation may be obtained electronically from:

<https://flh.fhwa.dot.gov/resources/specs/fp-14/wfl/>

52.214-3 Amendments to Invitations for Bids (Dec 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

52.214-4 False Statements in Bids (Apr 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

52.214-5 Submission of Bids (Mar 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)—

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

52.214-6 Explanation to Prospective Bidders (Apr 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b) (1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government’s control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time

specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

52.214-18 Preparation of Bids--Construction (Apr 1984)

(a) Bids must be—

- (1) Submitted on the forms furnished by the Government or on copies of those forms, and
- (2) *Manually signed*. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

- (1) Lump sum bidding;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words “no bid” in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

52.214-19 Contract Award—Sealed Bidding--Construction (Aug 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

52.214-34 Submission of Offers in the English Language (Apr 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

52.214-35 Submission of Offers in U.S. Currency (Apr 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a **firm fixed** contract resulting from this solicitation.

52.222-5 Construction Wage Rate Requirements—Secondary Site of the Work (May 2014)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

52.233-2 Service of Protest (Sep 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from **Contracting Officer, Contracts Section, Federal Highway Administration, 610 East Fifth Street, Vancouver, WA 98661-3801**.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

52.236-27 Site Visit (Construction) (Feb 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Prospective Offerors were encouraged by a Preliminary Letter posted to Sam.gov on August 24, 2022 to inspect the site prior to onset of adverse weather conditions. Currently, the site may not be accessible. There will be no government arranged site visits.

FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES

52.202-1 Definitions (Jun 2020)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning;
- (d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or
- (e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

52.203-3 Gratuities (Apr 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

52.203-5 Covenant Against Contingent Fees (May 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “*Bona fide agency*,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“*Bona fide employee*,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“*Contingent fee*,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“*Improper influence*,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

52.203-6 Restrictions on Subcontractor Sales to the Government (Jun 2020)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

52.203-7 Anti-Kickback Procedures (Jun 2020)

(a) Definitions.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor as used in this clause, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

Subcontract, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)

(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502-3(i) on the date of subcontract award.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102–2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

- (2) Rescind the contract with respect to which—
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either—
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be—
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
 - (3) For cost-plus-award-fee contracts—
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may—
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)

(a) *Definitions.* As used in this clause-

Agency means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have

subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.*

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

52.203-17 – Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights, (Jun 2020)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (FAR) 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section FAR 3.908.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award.

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)

(a) Definitions. As used in this clause—

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

“Subcontract” means any contract as defined in [subpart 2.1](#) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

52.204-1 Approval of Contract (Dec 1989)

This contract is subject to the written approval of the Western Federal Lands' Division Engineer (or delegate) or one level above the Contracting Officer, and shall not be binding until so approved.

52.204-4 Printed or Copied Double-Sided on Post Consumer Fiber Content Paper (May 2011)

(a) *Definitions.* As used in this clause—

“*Postconsumer fiber*” (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020)

(a) *Definitions.* As used in this clause:

Executive means officers, managing partners, or any other employees in management positions.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

Month of award means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d)

(1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (Federal Acquisition Regulation (FAR) provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the Contracting Officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at <http://www.fsrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

- (xi)Funding agency name and code.
- (xii)Government contracting office code.
- (xiii)Treasury account symbol (TAS) as reported in FPDS.
- (xiv)The applicable North American Industry Classification System code (NAICS).
- (3)Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if-
 - (i)In the subcontractor's preceding fiscal year, the subcontractor received-
 - (A)80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (B)\$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (ii)The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
 - (e)The Contractor shall not split or break down first-tier subcontract awards to a value below the threshold specified in FAR 4.1403(a), on the date of subcontract award, to avoid the reporting requirements in paragraph (d) of this clause.
 - (f)The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.
 - (g)
 - (1)If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.
 - (2)If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.
 - (h)The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

52.204-13 System for Award Management Maintenance (Oct 2018)

- (a) *Definition.* As used in this clause--
 "Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government

entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart [32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)), into SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [subpart 4.12](#); and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision [52.204-7](#) with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a Contractor has legally changed its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;
 (B) Comply with the requirements of subpart [42.12](#) of the FAR; and
 (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart [32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov. for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

52.204–14 Service Contract Reporting Requirements (Oct 2016)

(a) Definition. First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1–September 30).

(c) The Contractor shall report the following information:

- (1) Contract number and, as applicable, order number.
- (2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.
- (3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.
- (4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at www.sam.gov. (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)

(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and unique entity identifier); and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

52.204-18 Commercial and Government Entity Code Maintenance (Aug 2020)

(a) *Definition.* As used in this clause—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract for each location of contract, including subcontract, performance. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with [subpart 42.12](#). The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity

(CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

(f) If the contract includes Federal Acquisition Regulation clause [52.204-2](#), Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

52.204-19 Incorporation by Reference of Representations and Certifications (Dec 2014)

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

52.204-21 Basic Safeguarding of Covered Contractor Information Systems (NOV 2021)

(a) *Definitions.* As used in this clause—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ([44 U.S.C. 3502](#)).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (*i.e.*, information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. (NOV 2021)

(a) *Definitions.* As used in this clause—

Covered article means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from—

(1) Providing any covered article that the Government will use on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g.*, microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (NOV 2021)

(a) Definition.

Commercially available off-the-shelf (COTS) item, as used in this clause—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in Federal Acquisition Regulation (FAR) [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) *Subcontracts*. Unless this is a contract for the acquisition of commercial products or commercial services, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds the threshold specified in FAR [9.405-2](#)(b) on the date of subcontract award; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart [42.15](#);

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite [52.209-9](#) and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

52.209-10 – Prohibition on Contracting With Inverted Domestic Corporations (Nov 2015)

(a) *Definitions.* As used in this clause--

“Inverted domestic corporation means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984) Alternate I (Apr 1984)

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than **9/27/2023** subject to such extensions as may be authorized. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed **by 2/13/2023**. The completion date will be extended by the number of calendar days after the above date that the contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

52.211-12 Liquidated Damages—Construction (Sep 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of: See Special Contract Requirements, Subsection 108.04.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

52.211-18 Variation in Estimated Quantity (Apr 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

52.214-26 Audit and Records – Sealed Bidding (Jun 2020)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to-

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) *Subcontracts*. The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1) on the date of subcontract award.

**52.214-27 Price Reduction for Defective Certified Cost or Pricing Data--Modifications—
Sealed Bidding (Jun 2020)**

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) on the date of execution of the modification, except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d)

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid-

(1) Interest compounded daily, as required by 26 U.S.C. 6622, the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data which were incomplete, inaccurate, or noncurrent.

52.214-28 Subcontractor Cost or Pricing Data--Modifications—Sealed Bidding (Jun 2020)

(a) The requirements of paragraphs (b) and (c) of this clause shall-

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) [15.403-4\(a\)\(1\)](#) on the date of execution of the modification; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR [15.403-4\(a\)\(1\)](#), on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in FAR [15.403-4\(a\)\(1\)](#), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1\(b\)](#) applies. If the threshold for submission of certified cost or pricing data specified in FAR [15.403-4\(a\)\(1\)](#) is

adjusted for inflation as set forth in FAR [1.109](#)(a), then pursuant to FAR [1.109](#)(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR subsection [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR [15.403-4](#)(a)(1).

52.219-6 Notice of Total Small Business Set-Aside (Nov 2020)

(a) Definition. Small business concern, as used in this clause—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(2) Affiliates, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) Applicability. This clause applies only to-

(1) Contracts that have been totally set aside for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in [8.405-5](#) and [16.505](#)(b)(2)(i)(F).

(c) General.

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

52.219-8 Utilization of Small Business Concerns (Oct 2022)

(a) *Definitions.* As used in this contract—

HUBZone small business concern means a small business concern that meets the requirements described in [13 CFR 126.200](#), certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C.101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C.101\(16\)](#).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in [13 CFR part 121](#), including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Veteran-owned small business concern means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C.101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems,

assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c)

(1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in [13 CFR part 125](#); or

(ii) A HUBZone small business concern if it complies with the requirements in [13 CFR 126.616\(a\)](#) through [\(c\)](#).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(e)

(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

52.219-14 Limitations on Subcontracting (Oct 2022)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition. Similarly situated entity*, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (*e.g.*, for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for any of the small business concerns identified in [19.000\(a\)\(3\)](#);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in [19.000\(a\)\(3\)](#);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts [19.8](#), [19.13](#), [19.14](#), and [19.15](#);

(4) Orders expected to exceed the simplified acquisition threshold and that are—

(i) Set aside for small business concerns under multiple-award contracts, as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); or

(ii) Issued directly to small business concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#);

(5) Orders, regardless of dollar value, that are—

(i) Set aside in accordance with subparts [19.8](#), [19.13](#), [19.14](#), or [19.15](#) under multiple-award contracts, as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); or

(ii) Issued directly to concerns that qualify for the programs described in subparts [19.8](#), [19.13](#), [19.14](#), or [19.15](#) under multiple-award contracts, as described in [19.504\(c\)\(1\)\(ii\)](#); and

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(d) *Independent contractors*. An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting*. By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—
[Contracting Officer check as appropriate.]

X By the end of the base term of the contract and then by the end of each subsequent option period; or

☐ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

52.219-28 Post-Award Small Business Program Re-Representation (Oct 2022)*Note: Do not complete at time of bid/offer*

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in [13 CFR part 121](#) and the size standard in paragraph (d) of this clause.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was any of the small business concerns identified in [19.000\(a\)\(3\)](#) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in [19.000\(a\)\(3\)](#) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support-table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code _____ assigned to contract number _____.

(2) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it ☐ is, ☐ is not a women-owned small business concern.

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through [\(c\)](#). [*The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ____.*]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through [\(c\)](#). [*The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ____.*]

(6) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it ☐ is, ☐ is not a veteran-owned small business concern.

(7) [*Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.*] The Contractor represents that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(8) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that—

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.]

52.222-3 Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

52.222-4 Contract Work Hours and Safety Standards—Overtime Compensation (May 2018)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours

in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

52.222-6 Construction Wage Rate Requirements (Aug 2018)

(a) Definition.—“Site of the work”—

(1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; 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 period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. 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.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all 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.

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

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division

U.S. Department of Labor

Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division 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.

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

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

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute 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.

52.222-7 Withholding of Funds (May 2014)

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

52.222-8 Payrolls and Basic Records (Jul 2021)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, 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), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under

paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <https://www.dol.gov/agencies/whd/forms>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

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

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 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 of work performed, as specified in the applicable wage determination incorporated into the contract.

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

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

52.222-9 Apprentices and Trainees (July 2005)**(a) Apprentices.**

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

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

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

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

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

52.222-10 Compliance with Copeland Act Requirements (Feb 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

52.222-11 Subcontracts (Labor Standards) (May 2014)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Construction Wage Rate Requirements;
 - (2) Contract Work Hours and Safety Standards—Overtime Compensation (if the clause is included in this contract);
 - (3) Apprentices and Trainees;
 - (4) Payrolls and Basic Records;
 - (5) Compliance with Copeland Act Requirements;
 - (6) Withholding of Funds;
 - (7) Subcontracts (Labor Standards);
 - (8) Contract Termination—Debarment;
 - (9) Disputes Concerning Labor Standards;
 - (10) Compliance with Construction Wage Rate Requirements and Related Regulations;
- and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

52.222-12 Contract Termination—Debarment (May 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

52.222-14 Disputes Concerning Labor Standards (Feb 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. 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.

52.222-15 Certification of Eligibility (May 2014)

(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)(2) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

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

52.222-21 Prohibition of Segregated Facilities (Apr 2015)

(a) Definitions. As used in this clause-
Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
Segregated facilities means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

52.222-26 Equal Opportunity (Sept 2016)

(a) *Definition.*

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation information means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

Essential job functions means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

United States, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion,

sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in ☐

response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

- (A) Incorporation into existing employee manuals or handbooks; and
- (B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs

(OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.222-27 Affirmative Action Compliance Requirements for Construction (Apr 2015)

(a) *Definitions.* “Covered area,” as used in this clause, means the geographical area described in the solicitation for this contract.

“Deputy Assistant Secretary,” as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Employer identification number,” as used in this clause, means the Federal Social Security number used on the employer’s quarterly Federal tax return, U.S. Treasury Department Form 941.

“Gender identity” has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Minority,” as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

“Sexual orientation” has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel

are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under paragraphs (g)(1) through (16) of this clause, provided, the Contractor—

- (1) Actively participates in the group;
- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority.

Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

52.222-35 Equal Opportunity for Veterans (Jun 2020)

(a) *Definitions.* As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c)Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

52.222-36 Affirmative Action for Workers with Disabilities (Jun 2020)

(a)Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b)Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

52.222-37 Employment Reports on Veterans (Jun 2020)

(a) *Definitions.* As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran,” have the meanings given in Federal Acquisition Regulation (FAR) 22.1301.

(b)Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1)The total number of employees in the contractor’s workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2)The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3)The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c)The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans’ Employment Report” (see “VETS-4212 Federal Contractor Reporting” and “Filing Your VETS-4212 Report” at <http://www.dol.gov/vets/vets4212.htm>).

(d)The Contractor shall submit VETS-4212 Reports no later than September 30 of each year.

(e)The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date-

(1)As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 (2)As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f)The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C.4212.

(g)The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor- Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

52.222-50 Combating Trafficking in Persons (NOV 2021)

(a) *Definitions.* As used in this clause-

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means-

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Commercially available off-the-shelf (COTS) item —

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also [18 U.S.C. 1351](#), Fraud in Foreign Labor Contracting, and [52.203-13\(b\)\(3\)\(i\)\(A\)](#), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum-

- (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
- (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
- (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 ([22 U.S.C. chapter 78](#)), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
- (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

- (i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
 - (ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
 - (iii) Restrict the Contractor from-
 - (A) Conducting an internal investigation; or
 - (B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.
- (h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that-

- (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
 - (ii) Has an estimated value that exceeds \$550,000.
- (2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-
- (i) To the size and complexity of the contract; and
 - (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
- (3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

- (i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.*

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

52.222-54 Employment Eligibility Verification (MAY 2022)

(a) *Definitions.* As used in this clause-

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

- (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986 (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee-

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-

- (i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
- (ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of-

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <https://www.e-Verify.gov>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) Is for—

(i) Services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.

52.222-55 Minimum Wages Under Executive Order 13658 (JAN 2022)

(a) Definitions . As used in this clause—

United States means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker –

(1)

(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act ([29 U.S.C. chapter 8](#)), the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), or the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31](#), subchapter IV);

(B) Other than individuals employed in a bona fide executive , administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract ; and

(ii) A worker performs *in connection* with a contract if the worker 's work activities are necessary to the performance of a contract but are not the specific services called for by the contract .

(b) Executive Order Minimum wage rate.

(1) The Contractor shall pay to workers, while performing in the United States , and performing on, or in connection with, this contract , a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract .

(3)

(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance , but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker , all wages due free and clear without subsequent rebate or kickback . The Contractor may make deductions that reduce a worker 's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to workers as defined in paragraph (a). As provided in that definition –

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker ;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to–

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the contract , but who are not directly engaged in performing the specific work called for by the contract , and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under [29 U.S.C. 213\(a\)](#) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to–

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(a\)](#) ;

(B) Students whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(b\)](#) ; and

(C) Those employed in a bona fide executive , administrative, or professional capacity ([29 U.S.C. 213\(a\)\(1\)](#) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be

obtained at www.dol.gov/agencies/whd/government-contracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker :

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker ;
- (v) Any deductions made ; and
- (vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer .

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract . Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract . These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States .

52.222-62 Paid Sick Leave Under Executive Order 13706 (Jan 2022)

(a) Definitions . As used in this clause (in accordance with 29 CFR [13.2](#))-

Child , "domestic partner", and "domestic violence" have the meaning given in 29 CFR [13.2](#).

Employee –

(1)

(i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31, subchapter IV](#)), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) An employee performs "on" a contract if the employee directly performs the specific services called for by the contract ; and

(ii) An employee performs "in connection with" a contract if the employee 's work activities are necessary to the performance of a contract but are not the specific services called for by the contract .

Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship has the meaning given in 29 CFR [13.2](#).

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

Parent , "sexual assault", "spouse", and "stalking" have the meaning given in 29 CFR [13.2](#). United States means the 50 States and the District of Columbia.

(b) Executive Order 13706.

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States , this clause only applies with respect to that part of the contract that is performed within the United States .

(c) Paid sick leave . The Contractor shall -

(1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

(2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR Part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR [13.5](#) and 13.6, which are incorporated by reference in this contract ;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR Part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multiemployer plan , or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding*. The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor , so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR Part 13, or this clause, including-

(1) Any pay and/or benefits denied or lost by reason of the violation;

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) Payment suspension /contract termination/contractor debarment .

(1) In the event of a failure to comply with E.O. 13706, 29 CFR Part 13, or this clause, the contracting agency may , on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR Part 13, and this clause is in addition to the Contractor 's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR Part 13.

(h) Nothing in E.O. 13706 or 29 CFR Part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a

collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR Part 13.

(i) Recordkeeping.

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

- (i) Name, address, and social security number of each employee.
- (ii) The employee's occupation(s) or classification(s).
- (iii) The rate or rates of wages paid (including all pay and benefits provided).
- (iv) The number of daily and weekly hours worked.
- (v) Any deductions made.
- (vi) The total wages paid (including all pay and benefits provided) each pay period.
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR [13.5\(a\)\(2\)](#).
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.
- (ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR Part 13 as described in 29 CFR [13.5\(f\)\(5\)](#), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR [13.5\(d\)\(3\)](#).
- (xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR [13.5\(e\)](#), including copies of any certification or documentation provided by an employee.
- (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.
- (xiii) The relevant contract.
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR [13.5\(b\)\(5\)](#), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR [13.5\(b\)\(4\)](#).

(2)

(i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

(ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR [13.5\(a\)\(i\)](#) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such

estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR [13.5](#)(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

(4)

(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR [13.5](#)(c)(1)(iv) (as described in 29 CFR [13.5](#)(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) Interference/discrimination.

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR Part 13. Interference includes, but is not limited to-

- (i) Miscalculating the amount of paid sick leave an employee has accrued;
- (ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave ;
- (iii) Discouraging an employee from using paid sick leave ;

(iv) Reducing an employee 's accrued paid sick leave by more than the amount of such leave used;

(v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave ;

(vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave ; or

(vii) Making the use of paid sick leave contingent on the employee 's finding a replacement worker or the fulfillment of the Contractor 's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for—

(i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR Part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR Part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR Part 13; or

(iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR Part 13.

(k) *Notice.* The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR Part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Contractor , whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards.* Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract . Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency , the Department of Labor, or the employees or their representatives.

(m) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States .

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at

<http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

52.223-3 Hazardous Material Identification and Material Safety Data (Feb 2021) Alternate I (July 1995).

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No.313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert <i>None</i>)	Identification No.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No.313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No.313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No.313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

52.223-6 Drug-Free Workplace (May 2001)

(a) *Definitions.* As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs;
 and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (Aug 2018)

- (a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020)

(a) *Definitions*. As used in this clause—
“Driving”–

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

(c) The Contractor is encouraged to–

(1) Adopt and enforce policies that ban text messaging while driving–

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as–

(i) Establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

52.225-9 Buy American—Construction Materials (NOV 2021)

(a) *Definitions*. As used in this clause—

Commercially available off-the-shelf (COTS) item—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Domestic construction material means—

- (1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—
 - (i) An unmanufactured construction material mined or produced in the United States; or
 - (ii) A construction material manufactured in the United States, if—
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or
 - (B) The construction material is a COTS item; or
- (2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple

components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

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

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.

(1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR [12.505\(a\)\(2\)](#)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

None. [Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials

cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (dollars)*
Item1:			
Foreign construction material			
Domestic construction material			
Item2:			
Foreign construction material			
Domestic construction material			

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

52.225-13 Restrictions on Certain Foreign Purchases (NOV 2021)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR ChapterV, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR ChapterV and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

52.227-1 Authorization and Consent (Jun 2020)

(a)The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent-

(1)Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2)Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020)

(a)The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b)In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award.

52.227-4 Patent Indemnity—Construction Contracts (Dec 2007)

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

52.228-1 Bid Guarantee (Sept 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money

order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds—

- (1) To unsuccessful bidders as soon as practicable after the opening of bids; and
- (2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- (c) The amount of the bid guarantee shall be **20** percent of the bid price or **\$3 million**, whichever is less.
- (d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within **10** days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.
- (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

52.228-2 Additional Bond Security (Oct 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

52.228-11 Individual Surety - Pledges of Assets (Feb 2021)

(a) The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) [28.203-1](#); and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 (40 U.S.C. 3131)*. Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 which require performance and payment bonds (40 U.S.C. 3131).* For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (c)(1) of this clause.* For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

52.228-12 Prospective Subcontractor Requests for Bonds (May 2014)

In accordance with section 806(a)(3) of Pub. L. 102–190, as amended by sections 2091 and 8105 of Pub. L. 103–355 (10 U.S.C. 2302 note), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

52.228-14 Irrevocable Letter of Credit (Nov 2014)

(a) “Irrevocable letter of credit” (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be

issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The Offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the Web site <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

To: **Federal Highway Administration, Western Federal Lands Highway Division
610 East Fifth Street
Vancouver, Washington 98661-3801**

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at *[issuing financial institution's and, if any, confirming financial institution's]* office at *[issuing financial institution's address and, if any, confirming financial institution's address]* and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. *[This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.]* It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. ____ (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of [State of confirming financial institution, if any, otherwise State of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[*Confirming Financial Institution's Letterhead or Name and Address*]

(Date) _____

Our Letter of Credit Advice Number _____

Beneficiary: **Federal Highway Administration, Western Federal Lands Highway Division**

Issuing Financial Institution: _____

Issuing Financial Institution's LC No: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [*name of issuing financial institution*] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [*the expiration date*], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No.____ (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of [State of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of **the Federal Highway Administration, Western Federal Lands**
[Beneficiary Agency] the sum of United States \$_____. This draft is drawn under Irrevocable Letter of Credit No. _____.

**Federal Highway Administration
Western Federal Lands Highway Division**

[By]

52.228-15 Performance and Payment Bonds—Construction (Jun 2020)

(a) *Definitions.* As used in this clause-

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is valued at or below the threshold specified in Federal Acquisition Regulation 28.102-1(a) on the date of award of this contract, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of the Treasury,
Financial Management,
Service Surety Bond Branch,
3700 East West Highway,
Room 6 F01,
Hyattsville, MD 20782.

Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) *Notice of subcontractor waiver of protection* (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

52.229-3 Federal, State, and Local Taxes (Feb 2013)

(a) As used in this clause—

“After-imposed Federal tax” means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved Federal tax” means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“All applicable Federal, State, and local taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“Contract date” means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Local taxes” includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) (1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

52.232-5 Payments under Fixed-Price Construction Contracts (May 2014)

(a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor’s request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

- (i) Consideration is specifically authorized by this contract; and
- (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the “unearned amount”), the Contractor shall—

- (1) Notify the Contracting Officer of such performance deficiency; and
- (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—
 - (i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
 - (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting

Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 6305).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

52.232-17 Interest (May 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on –

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract

52.232-23 Assignment of Claims (May 2014)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-27 Prompt Payment for Construction Contracts (Jan 2017)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections [2.101](#), [32.001](#), and [32.902](#) of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the

Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., [52.232-38](#), Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR [52.233-1](#), Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(6) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to—

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in [31 U.S.C. 3903\(c\)\(1\)](#)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with [40 U.S.C. 3133](#),

asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

52.232-33 Payment by Electronic Funds Transfer— System for Award Management (Oct 2018)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in SAM.

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (*e.g.*, “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

52.232–40 Providing Accelerated Payments to Small Business Subcontractors. (NOV 2021)

a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial products or commercial services.

52.233-1 Disputes (May 2014) Alternate I (Dec 1991)

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

52.233-3 Protest after Award (Aug 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)

United States law will apply to resolve any claim of breach of this contract.

52.236-2 Differing Site Conditions (Apr 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of—

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the

time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

52.236-3 Site Investigation and Conditions Affecting the Work (Apr 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

52.236-4 Physical Data (Apr 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by: N/A.

(b) Weather conditions: N/A.

(c) Transportation facilities: N/A.

(d) Geotechnical data, design data, and environmental information consisting of the following, will be posted with the solicitation.

- (1) FLH Bridge oversized or overload vehicle permit request form Oct 2018.pdf
- (2) GR 05-21 Final WFLHD Geotechnical Engineering Report (without GR 18-21 addendum).pdf
- (3) GR 18-21 Addendum to Final WFLHD Geotechnical Engineering Report No. 05-21.pdf
- (4) mt-r-cmr6152001_qty_report_sandcreek.pdf

- (5) SandCreekHorizontalAli_LandXML.xml
- (6) 7125_HorzandVertReports.pdf
- (7) mt-r-cmr6152001_sections_sandcreek.pdf
- (8) Existing Ground.xml
- (9) Existing Ground_Sandcreek.xml
- (10) Streams_Project.shp.xml
- (11) Wetlands.shp.xml
- (12) MT FWS CMR 61520(1) 7 Mile_sur.dgn
- (13) MT FWS CMR 61520(1) Nichols Creek_sur.dgn
- (14) MT_FWS_CMR_61520(1)_Sand_Creek_Bridge_sur.dgn
- (15) MT FWS CMR 61520(1) Rock Creek_sur.dgn
- (16) MT FWS CMR 61520(1) Siparyann_sur.dgn
- (17) MT FWS CMR 61520(1) 7 Mile_cor.dgn
- (18) MT FWS CMR 61520(1) Nichols Creek_cor.dgn
- (19) MT FWS CMR 61520(1) Rock Creek_cor.dgn
- (20) MT_FWS_CMR_61520(1)_Sand_Creek_Bridge_cor.dgn
- (21) MT FWS CMR 61520(1) Siparyann_cor.dgn
- (22) MT_FWS_CMR_61520(1)_101(1).dgn
- (23) MT_FWS_CMR_61520(1)_101(2).dgn
- (24) Control Points.xlsx
- (25) mt-r-cmr6152001_SWPPPBinder.pdf

52.236-5 Material and Workmanship (Apr 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

52.236-6 Superintendence by the Contractor (Apr 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

52.236-7 Permits and Responsibilities (Nov 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

52.236-8 Other Contracts (Apr 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply

with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-10 Operations and Storage Areas (Apr 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

52.236-11 Use and Possession Prior to Completion (Apr 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

52.236-12 Cleaning Up (Apr 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from

the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52.236-13 Accident Prevention (Nov 1991) Alternate I (Nov 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will—

- (1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of Government operations and delays in project completion dates; and
- (3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) Before commencing the work, the Contractor shall—

- (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
- (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

52.236-15 Schedules for Construction Contracts (Apr 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

52.236-17 Layout of Work (Apr 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

52.236-21 Specifications and Drawings for Construction (Feb 1997) Alternate II (Apr 1984)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the

specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words “directed,” “required,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall be understood that the “direction,” “requirement,” “order,” “designation,” or “prescription,” of the Contracting Officer is intended and similarly the words “approved,” “acceptable,” “satisfactory,” or words of like import shall mean “approved by,” or “acceptable to,” or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

(c) Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed.”

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government’s reasons therefor. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) of this clause.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work

under this contract, the Contractor shall furnish See SCR 104.03 sets of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

52.236-26 Preconstruction Conference (Feb 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

52.242-13 Bankruptcy (July 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

52.242-14 Suspension of Work (Apr 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

52.243-4 Changes (June 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

52.244-2 Subcontracts (Jun 2020)

(a) *Definitions.* As used in this clause-

“Approved purchasing system” means a Contractor's purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds-

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(e)

(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting-

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F)The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G)A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2)The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f)Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-

(1)Of the acceptability of any subcontract terms or conditions;

(2)Of the allowability of any cost under this contract; or

(3)To relieve the Contractor of any responsibility for performing this contract.

(g)No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h)The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i)The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(j)Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

52.244-6 Subcontracts for Commercial Items (Oct 2022)

(a) Definitions . As used in this clause—

Commercial product, commercial service and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products , commercial services, or non-developmental items as components of items to be supplied under this contract .

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Nov 2021) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004](#)(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering

this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer .

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Nov 2021) , other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(v) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(vi) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment . (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) [52.219-8](#), Utilization of Small Business Concerns (Oct 2022) ([15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(viii) [52.222-21](#), *Prohibition of Segregated Facilities* (Apr 2015).

(ix) [52.222-26](#), Equal Opportunity (*Sept* 2016) (E.O.11246).

(x) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C.4212\(a\)](#));

(xi) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020)([29 U.S.C.793](#)).

(xii) [52.222-37](#), Employment Reports on Veterans (Jun 2020) ([38 U.S.C.4212](#)).

(xiii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv)

(A) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(B) Alternate I (Mar 2015) of [52.222-50](#)([22 U.S.C. chapter 78](#) and E.O. 13627).

(xv) [52.222-55](#), Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).

(xvii)

(A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3](#)(f).

(B) Alternate I (Jan 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3](#)(f) and the agency specifies that only its agency-provided training is acceptable).

(xviii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Nov 2021) , if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).

(xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ([46 U.S.C. 55305](#) and [10 U.S.C.2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#)).

(2) While not required, the Contractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract .

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 ([46 U.S.C.App.1241\(b\)](#)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are-

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)

(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both-

- (i) The Contracting Officer, and
- (ii) The:
Office of Cargo Preference Maritime Administration (MAR-590) 400 Seventh Street, SW Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to-

(1) Cargoes carried in vessels as required or authorized by law or treaty;
 (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 ([22 U.S.C.2353](#));

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial products or commercial services unless-

(i) This contract is-

- (A) A contract or agreement for ocean transportation services; or
- (B) A construction contract; or

(ii) The supplies being transported are-

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military-

- (1) Contingency operations;
- (2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates Maritime Administration 400 Seventh Street, SW Washington DC 20590 Phone: (202) 366-4610.

52.248-3 Value Engineering—Construction (Oct 2020) Alternate I (Apr 1984)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.

(b) *Definitions.* "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that—

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided*, that it does not involve a change—
 - (i) In deliverable end item quantities only; or
 - (ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.*

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing—*

(1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by—

- (i) 45 percent for fixed-price contracts; or
- (ii) 75 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$75,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a

subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(h) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering—Construction clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr 2012) Alternate I (Sept 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government—
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of

the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-10 Default (Fixed-Price Construction) (Apr 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

52.253-1 Computer Generated Forms (Jan 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

TRANSPORTATION ACQUISITION REGULATIONS CONTRACT CLAUSES

1252.211-70 Index for Specifications (Nov 2022)

If an index or table of contents is furnished in connection with specifications, such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not a part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

1252.223-71 Accident and Fire Reporting (Nov 2022)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes—

- (1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
- (2) Damage of \$1,000 or more to Government-owned or leased property, either real or personal;
- (3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or
- (4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed in writing within 24 hours to the Contracting Officer. Such report shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of—

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

1252.223-73 Seat Belt Use Policies and Programs (Nov 2022)

In accordance with [Executive Order 13043](#), Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Click it or Ticket seat belt safety section of NHTSA's website at <https://www.nhtsa.gov/campaign/click-it-or-ticket> and <https://www.nhtsa.gov/risky-driving/seat-belts>.

1252.228-74 Notification of Payment Bond Protection (Nov 2022)

(a) The prime contract is subject to the Bonds statute (historically referred to as the Miller Act) (40 U.S.C. chapter 31, subchapter III), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Bonds statute for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Bonds statute should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact Name)

(Telephone Number)

(Email Address)

(d) Subcontract flowdown requirements. This clause shall be flowed down to all subcontractors. Prime contractors shall insert this notice clause in all first-tier subcontracts and shall require the clause to be subsequently flowed down by all first-tier subcontractors to all their subcontractors, at any tier. This notice contains information pertaining to the surety that provided the payment bond under the prime contract and is required to be inserted in its entirety to include the information set forth in paragraph (c).

Contractor Performance Evaluations (Aug 2014)

a. Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR 42.1502 and TAM 1242.1502. The final performance evaluations will be prepared at the time of completion of work.

b. The Contractor can elect to review the evaluation and submit additional information or provide a rebuttal statement. The contractor will be permitted 60 calendar days to respond from the date of receipt of the evaluation. Contractor response is voluntary. If the contractor does not respond within 60 days, the Government will presume that the Contractor has no comment. Any disagreement between the parties regarding an evaluation will be referred to an individual at a level above the Contracting Officer, whose decision is final.

c. Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

The Federal Highway Administration utilizes the Contractor Performance Assessment Reporting System (CPARS) to record and maintain past performance information. CPARS hosts a suite of web-enabled applications that are used to document contractor performance information that is required by Federal Regulations. The CPARS module assesses performance on contracts for Systems, Services, Information Technology, and Operations Support; Architect-Engineer contracts; and Construction contracts. Reference material can be accessed in CPARS.

The registration process requires the Contractor to identify an individual that will serve as a primary contact. This individual will be authorized access to the evaluation for review and comment. In addition, the Contractor is encouraged to identify a secondary contact in the event the primary contact is unavailable to process the evaluation within the required 60 day time period. After the FHWA Focal Point registers the contract in CPARS, the contractor representative will receive a system generated email notifying him/her that the contract is registered. A system generated email will also provide the Contractor with a User ID if the person does not already have a CPARS User ID.

After a performance evaluation has been prepared and is ready for comment, the Contractor representative will receive a system generated email notification that the performance evaluation is electronically available for review and comment. The Contractor representative will receive an automated email whenever an assessment is completed and can subsequently retrieve the completed assessment from CPARS.

Contractors may access evaluations in CPARS for review and comment.

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General Wage Decision

General Decision Number: MT20220080 06/03/2022

State: Montana

Construction Type: Highway

Counties: Montana Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	* Executive Order 14026 generally applies to the contract. * The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	* Executive Order 13658 generally applies to the contract. * The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2022.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	06/03/2022

SUMT2022-001 04/01/2022

	Rates	Fringes
CARPENTER		
Carpenter/Piledriverman.....	\$ 35.00	13.82
Millwright.....	\$ 39.68	14.27
CEMENT MASON/CONCRETE FINISHER...	\$ 32.44	16.03
DIVER		
Diver Tender.....	\$ 43.98	17.84
Diving.....	\$ 89.96	17.84
Stand-By.....	\$ 44.98	17.84

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing when work is done under hyperbaric conditions.

Depth Pay (Surface Diving):
 0-20 ft.: Free zone
 >20-100 ft.: \$2.00 per ft.
 >100-150 ft.: \$3.00 per ft.
 >150-220 ft.: \$4 00 per ft.
 >220 ft.: \$5.00 per ft.

Diving in Enclosures (Diver Only):
 0-25 ft.: Free zone
 >25-300 ft.: \$1.00 per ft.

ELECTRICIAN (LINE CONSTRUCTION)

Equipment Operator.....	\$ 37.26	18.06
Groundman.....	\$ 29.09	17.13
Lineman.....	\$ 48.65	19.30

ELECTRICIAN

All Areas.....	\$ 37.94	19.42
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IRONWORKER.....	\$ 29.54	24.49
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LABORER

Group 1.....	\$ 26.90	12.00
Group 2.....	\$ 29.97	12.00
Group 3.....	\$ 30.19	12.00
Group 4.....	\$ 31.18	12.00

GROUP 1: Flag Person

GROUP 2: All General Labor work; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control Worker

GROUP 3: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker); Laser Equipment; Non-riding Rollers; Pipelayer; Posthole Digger(power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod-Cutter-power; Tampers

GROUP 4: Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman (\$1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck Mounted Wagon Drill; Welder including Air Arc

PAINTER.....	\$ 34.95	12.47
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POWER EQUIPMENT OPERATOR:

Group 1.....	\$ 31.52	12.40
Group 2.....	\$ 33.55	12.40
Group 3.....	\$ 34.66	12.40
Group 4.....	\$ 35.60	12.40
Group 5.....	\$ 36.94	12.40
Group 6.....	\$ 38.13	12.40
Group 7.....	\$ 40.73	12.40

GROUP 1: Air Compressor; Auto Fine Graders; Belt Finishing Machine; Boring Machine (small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front End Loader Under 1 CU Yard; Heavy Duty Drills; Herman Nelson Heater; Mulching Machine; Oiler, All Except Cranes & Shovels; Pumpman

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel to and including 3 CU Yard; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine Large; Broom, Self-Propelled; Concrete Travel Batchers; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer; Rubber-Tired, Push & Side Boom; Elevating Grader/Gradall; Field Equipment Serviceman; Front End Loader 1 CU Yard to including 5 CU Yard; Grade Setter; Heavy Duty Drills, All Types; Hoist/Tugger, All; Hydralift & Similar; Industrial Locomotive; Motor Patrol, Except Finish; Mountain Skidder; Oiler - Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/Grout Machine; Punch Truck; Roller, Other Than Asphalt; Roller, Sheepsfoot, Self-Propelled; Roller, 25 Tons and Over; Ross Carrier; Rotomill Under 6 Ft; Trenching Machine; Washing/Screening Plant

GROUP 3: Asphalt Paving Machine; Asphalt Screed; Backhoe/Excavator/Shovel Over 3 CU Yard; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes; Creter; Cranes, Electric Overhead; Cranes 24 Tons and Under; Curb Machine/Slip Form Paver; Finish Dozer; Front End Loader Over 5 CU Yard; Mechanic/Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, Over 6 FT; Scraper, Single, Twin or Pulling Belly Dump; Yo-Yo Cat

GROUP 4: Asphalt/Hot Plant Operator, Cranes, 25 Tons to 44 Tons; Crusher Operator; Finish Motor Patrol; Finish Scraper

GROUP 5: Cranes, 45 Tons To Including 74 Tons

GROUP 6: Cranes, 75 Tons To Including 149 Tons; Crane, Whirley (All)

GROUP 7: Cranes, 150 Tons To Including 250 Tons (Add \$ 1.00 For Every 100 Tons Over 250 Tons; Crane, Tower (All)

TRUCK DRIVER

Group 1.....	\$ 27.39	12.20
Group 2.....	\$ 34.70	12.20

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and Similar Equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/ Tireperson; Truck Mechanic; Trucks With Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to

General Wage Decision

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

General Wage Decision

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3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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ATTENTION

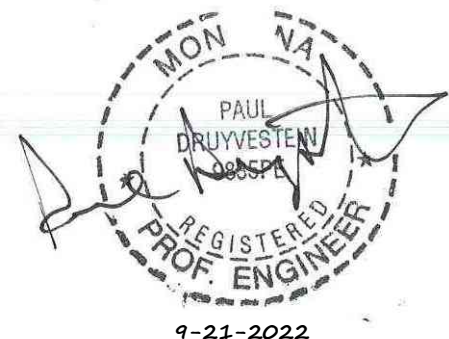
The following Special Contract Requirements (SCRs) are only a portion of the specifications for this project. These SCRs amend and supplement the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14. The FP-14 is a separately published book. In order to understand the solicitation properly you need to have the FP-14 as well as this packet. Pay particular attention to the provisions of Subsection 104.04 in the FP-14 that explain how each of the many contract documents fit together.

One printed copy of the FP-14 will be distributed to the successful bidder.

To view the FP-14 electronically, go to:

<https://highways.dot.gov/federal-lands/specs>

A single paper copy can also be obtained from the Research & Technology Product Distribution Center (RTPDC) by e-mail report.center@dot.gov, phone 814-239-1160, or fax 814-239-2156.



Special Contract Requirements

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DIVISION 100 GENERAL REQUIREMENTS
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Section 101. — TERMS, FORMAT, AND DEFINITIONS

11/08/21– FP-14

101.03 Abbreviations. Add the following to paragraph (a):

AMS-STD – Aerospace Material Specification Standard

OHWM or OHW – Ordinary High-Water Mark

SAE – Society of Automotive Engineers

101.04 Definitions. Add the following:

Holidays — Holidays occur on the following days:

- 1st day of January - New Years' Day;
- 3rd Monday of January - Martin Luther King, Jr. Day;
- 3rd Monday of February - Presidents' Day;
- Last Monday of May - Memorial Day;
- 19th day of June – Juneteenth National Independence Day;
- 4th day of July - Independence Day;
- 1st Monday of September - Labor Day;
- 2nd Monday of October - Columbus Day;
- 11th day of November – Veterans' Day;
- 4th Thursday of November - Thanksgiving Day;
- 25th day of December - Christmas Day;
- Other days declared holidays by the Congress or the President; and
- If a holiday occurs on a Saturday, the preceding Friday is also a legal holiday. If a holiday occurs on a Sunday, the Monday following is also a legal holiday.

In-Water Work — Work below the ordinary high-water mark (OHWM or OHW).

Special Contract Requirements

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Pneumatic Roller — Self-propelled compaction device with smooth pneumatic tires staggered in position to provide overlap between the front and rear tires.

Section 102. — BID, AWARD, AND EXECUTION OF CONTRACT

04/02/21– FP-14

102.02 Preparation of Bids. Add the following:

Submit bids for construction of the project under two separate bid schedules designated A and B. Complete all schedules. Each schedule represents alternate amounts of work and not alternate methods of completing the work.

Schedule A consists of work at Rock Creek (Roadway, Culvert, Concrete Structure and Steel Bridge), Seven Mile (Roadway and Culverts), Nichols Creek (Roadway and Culverts) and Sand Creek (Roadway and Steel Bridge).

Schedule B consists of all work on Schedule A and work at Route 101 (Culverts) and Siparyann Creek (Culverts).

102.05A Contract Award. (Added Subsection).

Follow the requirements of FAR Provision 52.214-19, Contract Award - Sealed Bidding - Construction.

The Government wishes to complete as much work as possible. If sufficient funds are available at the time of award, the Government will award Schedule “B” to the low responsible bidder of Schedule “B”. If sufficient funds are not available at the time of award to award Schedule “B”, the Government will award Schedule “A” to the low responsible bidder of Schedule “A”. The successful bidder will be awarded all pay items in the bid schedule awarded.

Section 103. — SCOPE OF WORK

04/03/20– FP-14

103.01 Intent of Contract. Add the following:

Additional work on sites within or in the vicinity of the project may be requested by the CO. Such work generally will be in response to natural disasters. Provide cost proposals and perform work as ordered by the CO.

103.05 Partnering. Delete the text of this Subsection and insert the following:

To facilitate this contract, the CO offers to participate in a partnership with the Contractor. This partnership draws on the strengths of each organization to identify and achieve reciprocal goals. Partnering strives to resolve problems in a timely, professional, and non-adversarial manner. If problems result in disputes, partnering encourages, but does not require, alternative dispute resolution instead of the formal claim process. The objective is effective and efficient contract performance to achieve a quality project within budget and on schedule.

Acceptance of this partnering offer by the Contractor is optional, and the partnership is bilateral.

(a) Formal partnering. If the formal partnering offer is accepted, mutually agree with the CO on the level of organizational involvement and the need for a professional to facilitate the partnering process. Engage the facilitator and other resources for key Contractor representatives and the CO to attend a partnership development and team-building workshop usually between the time of award and the Notice to Proceed. Hold additional progress meetings upon mutual agreement.

The direct cost of formal partnering facilities, professional facilitation, copying fees, and other miscellaneous costs directly related to partnering meetings will be shared by the Contractor and Government. Secure and pay for facilities, professional fees, and miscellaneous requirements. Submit invoices to the CO. The Government will reimburse the Contractor for 50 percent of the agreed costs incurred for the formal partnering process. The Government's share will not exceed \$5,000.00.

Each party is responsible for making and paying for its own travel, lodging, and meal arrangements. No time extension for the completion of the project will be made for the use of formal partnering.

(b) Informal partnering. If the informal partnering offer is accepted, mutually agree with the CO on the timing and substance of an informal Partnering meeting.

Costs of implementing and maintaining the informal partnership are the responsibility of the party incurring the cost.

103.06 Electronic Documentation. (Added Subsection).

After award of the contract, provide all written documents in pdf format, or an approved fixed-layout electronic format.

In addition to electronic documents, provide paper copies of the following documents and as requested by the CO:

- (a) Documents required under Section 102;
- (b) Drawings required under Subsection 104.03;
- (c) ESCP/SWPPP of Record required under Subsection 107.01A;
- (d) Weight records required under Subsection 109.03;
- (e) Receiving records required under Subsection 109.04;
- (f) Final voucher and release of claims required under Subsection 109.09;
- (g) WFLHD 470 forms required under Section 153;
- (h) Construction schedules required under Section 155; and
- (i) Concrete batch tickets required under Subsection 552.09.

Provide documents in their native file format (the format produced by the software that the document was created in) upon request.

Provide a resolution quality where color, text, and lines are clearly discernible. Submit each document in an individual file. Name files with a unique document name that includes the document date, document description, and project number, in the following format or as requested by the CO:

MMDDYYYY_item description_project number; where: MMDDYYYY = month, day, and year.

Deliver electronic documents to the email address identified at the preconstruction conference or otherwise amended in writing by the CO. Limit the size of emailed documents to 20MB. If a document cannot be split or reduced below 20MB, then the CO will provide guidance on how to deliver the documents electronically, or a paper copy may be required. Documents delivered on removable media (compact disc, USB memory stick, etc.) will not be accepted. Documents delivered after 5:00 p.m. local time will be considered received at 7:00 a.m. on the following business day.

The CO will reject without review any documents that are unreadable or corrupted, illegible, or include malicious content.

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Provide one paper copy of each document upon request, unless more paper copies are specified.

103.07 Signatures for Electronic Documentation. (Added Subsection).

(a) Definitions.

(1) Electronic Signature – A computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature.

(2) Wet Signature – A signature of ink from pen, or a scanned copy of an actual signature of ink from pen.

(b) Sign documents requiring a signature by electronic signature or by wet signature.

Unless the CO requests a wet signature, an electronic signature may be provided. Assume responsibility for the validity of electronic signatures. The Government will assume that the authorized individual's electronic signature is authentic.

Provide electronic signatures in the following formats:

(1) A digital signature from an encryption application;

(2) A digitized image of a paper signature; or

(3) Any other unique form or individual identification that can be used as a means of authenticating a record, record entry, or document.

If signing a document by wet signature, scan the complete document into an electronic format.

Section 104. — CONTROL OF WORK

06/15/2022– FP-14

104.03 Specifications and Drawings. Amend as follows:

Delete the first paragraph of Subsection (a) and substitute the following:

(a) General. Submittals include both documents and drawings required to construct the work. Review submittals for accuracy, completeness, and compliance with the contract. Verify submittals according to Section 153. Submittals that do not include evidence of Contractor verification may be returned for resubmission.

Submit documents in an electronic format for approval. Submit drawings in both paper and electronic format for approval. See Subsection 103.06.

Time for approval starts over when submittals are returned for revision or if additional information is requested by the CO. Do not perform work related to submitted documents or drawings before approval of the CO. Obtain written approval before changing or deviating from the approved submittals.

Delete Subsection (a)(1) and substitute the following:

(1) Documents other than drawings. Documents other than drawings include descriptive literature, illustrations, schedules, performance and test data, certifications, and similar material submitted by the Contractor to certify or explain, in detail, specific portions of the work required by the Contract. Allow 14 days for approval by the CO unless otherwise specified.

Delete the first sentence in the last paragraph of Subsection (a)(2) and substitute the following:

Submit 3 paper sets of drawings, and an electronic set of drawings with supporting calculations.

Add the following to Subsection (b)(2):

(o) Plan, elevation and section views of the bridge superstructure per Subsection 555.05.

104.05 Load Restrictions. Add the following:

Access to the project sites will involve crossing existing load restricted bridges. The bridge inspection reports and load rating summaries are located in the physical data. Submit oversized and overweight permit requests for non-legal loads and loads exceeding the posted load for the existing Duval Creek Bridge and Nicholls Coulee Bridge. Use the FLH Bridge Oversized/Overweight Permit Load Request form listed under FAR Clause 52.236-4 Physical Data (Apr 1984).

Unless otherwise permitted, do not operate equipment or vehicles that exceed the legal or posted load limits over new or existing structures. Submit a plans and calculations for review and approval to the CO to utilize existing or new structures as temporary works or work platforms according to Section 562.

Section 105. — CONTROL OF MATERIAL

04/02/21– FP-14

105.02 Material Sources. Amend as follows:

(a) Government-provided sources. Delete the text of this Subsection and substitute the following:

There are no Government-provided sources for this project.

(b) Government-provided material stockpile. Add the following:

There are no Government-provided material stockpiles for this project.

(c) Contractor-located sources. Delete the text of this Subsection and substitute the following:

The Contractor is responsible for Contractor-located material sources, including established commercial material sources. Use sources that fulfill the contract quantity and quality requirements. Determine the quantity, type of equipment, and work necessary to select and produce an acceptable material. Secure permits and clearances for use of the source and submit copies of the documents to the CO. Follow the environmental requirements of Subsection 107.10(d) and anticipate a minimum of 60 days for approvals for use of any contractor located site or source. Submit available historical data indicating acceptable material can be produced from the source. Perform quality control sampling and testing according to the approved Contractor Quality Control Plan in Section 153, aggregate source quality tests, and applicable Sampling, Testing, and Acceptance Requirements table included at the end of each Section. Allow the CO the opportunity to witness sampling and splitting of the test material.

Weed free certification. All material sources and materials incorporated into the work must be certified to be free from noxious weeds, invasive plants, and other deleterious materials by a federal, state or local public agency. Commercial certifications may be acceptable if materials have been certified through the North American Weed Free Forage Program standard or a similarly recognized certification process approved by the CO. Submit material certifications to the CO for approval at least 7 days before their use in the work.

105.04 Handling and Storing Material. Delete the text of the second paragraph and substitute the following:

Use only approved areas by the CO for staging or storing of materials such as culverts, geotextile fabric, temporary traffic control devices; and for equipment parking.

Provide additional space as needed. Do not use private property for staging, storage, or disposal without written permission of the owner or lessee and prior to completion of the requirements of Subsection 107.10(d). Submit copies of agreements and documents and do not use property until approved by CO.

Special Contract Requirements

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Section 106. — ACCEPTANCE OF WORK

04/02/21– FP-14

106.01 Conformity with Contract Requirements. Amend as follows:Add the following to the second paragraph:

Use the procedures for sampling and testing contained in the WFLHD *Sampling and Testing Methods*, except, when a specified sampling or test method is not included in this supplement, sample and test according to the referenced test procedure.

Delete the third paragraph and substitute the following:

Use the FLH *Field Materials Manual (FMM)*, *Appendix B: FLH Test Methods* in effect on the date of the IFB or RFP. Electronic copies of the FLH Test Methods can be downloaded from:

<https://highways.dot.gov/federal-lands/materials/field-materials-manual>

Delete the fourteenth paragraph and substitute the following:

Remove, repair, or replace work that does not conform to the contract, or to prevailing industry standards where no specific contract requirements are noted. Remove, repair, or replace work; provide temporary traffic control; and perform other related work to correct nonconformities at no cost to the Government.

Add the following:

Obtain copies of the following documents at:

<https://highways.dot.gov/federal-lands/construction/paynotes>

- *Construction Paynote Examples*, dated August 2011.

Obtain copies of the following documents at:

<https://highways.dot.gov/federal-lands/materials>

- *WFLHD Sampling and Testing Methods*;
- Materials Testing Forms;
- FLH T 521 – *Standard Method of Test for Determining Riprap Gradation by Wolman Count*; and
- FLH Addendum to AASHTO T 308 – *Standard Method of Test for Correction Factors for Hot Mix Asphalt (HMA) Containing Recycled Asphalt Pavement (RAP) by the Ignition Method*.

106.02 Visual Inspection. Delete the text of this Subsection and substitute the following:

Acceptance is based on visual inspection of the work for compliance with the specific contract requirements. Use prevailing industry standards in the absence of specific contract requirements or tolerances.

106.03 Certification. Add the following after the second paragraph:

Obtain required certifications and maintain records of all required certifications according to Subsections 103.04, 153.04, and 155.07.

Submit a completed Form WFLHD 87 *Certification of Compliance* with each material requiring a certification. An electronic version may be found at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>

Submit all certifications to the CO unless otherwise specified in the Section ordering the work.

Section 107. — LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

06/15/22(1)– FP-14

107.01 Laws to be Observed. Delete the third paragraph and substitute the following:

Comply with the terms and conditions included in all permits and agreements obtained by the Government for performing the work included in this contract (See Section H). Notify the CO immediately of any changes, including modifications to Government-obtained permits, or any additional permits or agreements that are required by the Contractor's methods of operation. Allow adequate time in the construction schedule for any additional permits or changes to Government-obtained permits. Furnish copies of all acquired permits and agreements not in the contract.

Comply with the requirements of the Fire Protection and Suppression Plan included in this contract (See Section J).

107.01A Montana Pollutant Discharge Elimination System Permit (MPDES). (Added Subsection).

(a) Erosion Control Supervisor. Provide a qualified Erosion Control Supervisor according to Subsection 157.03.

(b) Preparation of the Storm Water Pollution Prevention Plan (SWPPP). The Government will make a preliminary SWPPP available under FAR Clause 52.236-4 – Physical Data. Perform the following:

(1) Update and complete all information in the preliminary SWPPP narrative.

(2) Revise or prepare new site maps and erosion/sediment control details and layout sheets in the preliminary SWPPP as necessary to accommodate project site conditions and proposed construction operations. Include map locations and erosion and sediment control measures for all Government-provided:

(a) Staging areas;

(b) Equipment storage areas;

(c) Erodeable stockpiles; and

(d) Other locations required by the state NPDES storm water permit.

(3) Identify the Erosion Control Supervisor and their qualifications in the preliminary SWPPP.

(4) Submit one electronic copy of the SWPPP to the CO prior to the preconstruction conference. Allow 10 working days for CO approval of the SWPPP. Upon approval by

the CO, print one paper copy and place in a binder following the FHWA tab format. The approved SWPPP becomes the SWPPP of record for the project.

(5) Maintain and update the SWPPP of record as needed throughout construction as required by the state NPDES storm water permit. Make the SWPPP available for public and regulatory-agency inspection.

Do not perform any ground disturbing activities including clearing, grubbing, or earthwork until the updated SWPPP of record has been approved by the CO.

(c) Public Notice. Provide an aluminum sign panel to be installed in a location approved by the CO. Fabricate and mount signs according to Section 635. Post signs in a publicly accessible location. Furnish signs containing the following information:

(1) The NPDES Permit authorization number.

(2) Contractor's contact name and phone number for obtaining additional information.

(3) Laminated 8.5" x 11" sheet of paper that includes the following statements:

- "Request project information from Montana DEQ Water Protection Bureau at (406) 444-3080"
- "File a report at: <http://deq.mt.gov/DEQAdmin/ENF/Spill>".

Removal and disposal of the sign panel, posts, and any other information posted on the sign panel will be performed by others.

(d) Inspections. Perform SWPPP inspections as required in the state NPDES storm water permit, Subsection 157.14, and the SWPPP. Document inspections using FHWA forms provided in the SWPPP of record and retain the records in the SWPPP binder. Submit each inspection to the CO for approval. Allow 2 working days for CO approval of inspections. Co-sign each approved inspection and file in the SWPPP binder. Complete all SWPPP forms as construction progresses until final acceptance

(e) Revisions to the SWPPP. Ensure that all erosion and sediment control procedures, practices, and inspections are current as required by the state NPDES permit. Revise the SWPPP as necessary during construction and as required by the state NPDES permit. Submit each revision to the CO for approval. Allow 2 working days for CO approval of a revision. Co-sign each approved SWPPP revision and file in the SWPPP binder. Implement approved revisions and corrective actions according to the timelines in the state NPDES permit.

(f) Project close-out. Provide the CO with the complete SWPPP of record upon final acceptance of the project, including inspection forms, logs, and all other required documentation added during the project.

(g) Contractor selected sites. Prepare separate SWPPP and file separate NOI for all Contractor-selected sources and all waste, borrow, and staging sites not included in the

contract. These SWPPP(s) and NOI(s) are solely the responsibility of the Contractor. Do not submit to CO for approval or for signature.

107.02 Protection and Restoration of Property and Landscape. Amend as follows:

Delete the third paragraph and substitute the following:

Do not disturb any area outside the construction limits unless authorized according to Subsections 105.02(c) and 107.10(d). Replace trees, shrubs, or vegetated areas outside the construction limits damaged by construction operations as directed and at no cost to the Government. Only remove damaged limbs of existing trees when directed by an approved arborist.

Add the following to the fourth paragraph:

Paleontological remains and archeological specimens found within the construction area are the property of the CMR National Wildlife Refuge and will be removed only by the CMR National Wildlife Refuge or designated representatives. Notify the CO within 1 hour of any discovery. Include a brief statement of the location and details of the finding.

107.03A Public Notice. (Added Subsection).

Publish notices of the road work in local newspapers and on local radio stations. (Malta/Lewistown) Include a description of the work, expected delays, and periods when the road is open to traffic without delays. The notice is to be posted on the bulletin boards at the Fred Robinson Bridge Campground and Sand Creek Wildlife Station. Issue the notice at least 5 days before beginning work on the project or beginning work after a winter suspension, and at least two times during the normal tourist season.

107.08 Sanitation, Health, and Safety. Add the following after the first paragraph:

Submit an accident prevention plan for implementing safety and health standards at the Preconstruction Conference. Use the Government furnished Form WFLHD-28, *Guide Outline of Contractor's Accident Prevention Plan*.

107.10 Environmental Protection. Amend as follows:

(b) Oil and hazardous substances. Add the following:

Inspect all vehicles and equipment conducting operations in or within 150 feet of wetlands or water daily for fluid leaks.

(c) Dirt, plant, and foreign material. Delete the text of the first paragraph and substitute the following:

Remove dirt, plant, and foreign material from vehicles and equipment before entry into U.S. Fish and Wildlife Service CMR Refuge. Prevent introduction of noxious weeds and non-native

plant species into the work site. Follow applicable Federal land management agency requirements and state requirements. Maintain cleaning and inspection records. Clean hauling vehicles before their initial entry; subsequent entries will not require cleaning unless requested. Notify the CO a minimum of 48 hours before entry to allow for inspection.

Add the following to paragraph (c):

Clean all vehicles and equipment to remove all visible traces of soil, plant material, debris, and petroleum from wheels, tires, tracks, drive mechanisms, undercarriages, etc. Only materials and equipment free of toxic pollutants may be placed within wetlands and waters.

(d) Clearances for Contractor-selected, noncommercial areas. Delete this Subsection and substitute the following:

(d) Sites outside construction limits. Activities outside the construction limits include, but are not limited to the following; material sources, waste sites, haul roads, staging areas, and water sources. Provide the following documents to the CO and anticipate a minimum of 60 days for approvals. Do not use sites or sources until approved by CO.

The requirements (1) through (6) below do not apply to Government designated sites or sources or commercial sites or sources that are established, have provided material over the last two years, have appropriate Federal, State and local permits, and do not require expansion outside their currently established and permitted area.

(1) Proposed activity description. Submit a description, schedule, and location of the proposed activities for approval by the CO. Include maps of the area and other relevant information.

(2) Cultural resources. Submit written documentation satisfactory to the CO for a recommendation of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1) for historic properties on or eligible for listing to the National Register of Historic Places. Provide either:

(a) Documentation showing there are no cultural resources present, and a recommendation of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1). Documents must be prepared by an individual qualified under the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 FR 44738-44739 and 36 CFR Part 61.

Documentation must be satisfactory to the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) as appropriate, according to 36 CFR 800.3(c).

The CO will submit the documentation to the SHPO or THPO.; or

(b) Documentation showing a finding of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1) has been previously obtained for the proposed activities from the State, Tribal Government or Federal Land Management Agency

responsible for the land. Include attached copies of SHPO concurrence, or Memorandum of Agreement (MOA) where concurrence is not required.

(3) Species protected under the Endangered Species Act of 1973. Submit written documentation satisfactory to the CO that the proposed action will have no effect to any threatened or endangered species or their critical habitat. Provide either:

(a) A current list of all threatened or endangered species in the site of proposed activities from the U.S. Fish and Wildlife Service and National Marine Fisheries Service; and a recommendation of a "no effect" determination according to Section 7 of the Endangered Species Act prepared by a biological specialist with a minimum of 3 years of experience in Endangered Species Act compliance or other qualifications acceptable to the CO. or

(b) Documentation showing the proposed activities have previously been determined to comply with the Endangered Species Act and this determination remains valid. This documentation must be from the State, Tribal Government or Federal Land Management Agency responsible for the land. Attach evidence of compliance, including correspondence with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

(4) Wetlands and Waters. Submit written documentation satisfactory to the CO, that the proposed action will comply with Sections 404 and 401 of the Clean Water Act, Executive Order 11990, and will not affect any wetlands or waters under Federal, State, or local jurisdiction. Documentation must be prepared by a wetland specialist with a minimum of 3 years of experience in wetland and ordinary high-water mark delineation.

(5) Federal lands. Before use of sites on Federal lands, submit a copy of the Letter of Approval or Special Use Permit from the applicable Federal agency allowing use of the site for intended purposes.

(6) Tribal, state and local approvals. Comply with applicable laws regarding the proposed activities. Submit copies of required clearances, including hazardous waste compliance, tribal, State and local permits and approvals.

(e) Other requirements.

Comply with the following requirements:

(1) If active bird nests are identified during clearing operations, suspend operations at the discovery site immediately, notify the CO within 1 hour, and continue operations in other approved areas. The CO will inform the Contractor when operations may resume at the discovery site.

(2) Store all food, toiletries, and other potential attractants (e.g., petroleum products, antifreeze, personal hygiene items) in wildlife-proof containers or enclosed construction equipment, except during actual use.

- (3)** Remove all trash from the project site daily and dispose of trash as appropriate and according to Subsection 203.05.
- (4)** Conduct machinery maintenance and refueling at a distance of 150 feet or greater from any wetlands or waters. Refueling of equipment may occur within 50 feet of waterbodies if spill prevention measures are in place and if approved by the CO.
- (5)** When operating stationary equipment (e.g., generators, cranes, etc.) within 150 feet of any wetlands or waters, furnish and install CO approved secondary containment measures. Inspect equipment for fluid leaks daily, and address all fluid leaks according to Subsection 107.10(b).
- (6)** Use biodegradable erosion control or fabric material adjacent to waters of the U.S. Do not use material that includes stabilized netting or stabilized open mesh for fiber rolls, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. .
- (7)** Maintain emergency spill control materials, such as oil booms and spill response kits, on-site at each work area, ready for immediate deployment.
- (8)** Conduct construction-related activities from July 1 to October 31.
- (9)** Do not feed bears.
- (10)** Report grizzly bear sightings or incidents to the CO within two hours of sighting.
- (11)** Modify construction activities any time the potential of compromising the safety of a grizzly bear is identified.
- (12)** Do not perform construction-related activities from 9:00 p.m. to 6:00 a.m..

Section 108. — PROSECUTION AND PROGRESS

04/02/21– FP-14

108.01 Commencement, Prosecution, and Completion of Work. Add the following:

Furnish at least a 48-hour advanced notice before changing the current work schedule. Work schedule changes that include additional shifts require a 14-day advanced notice.

Perform work under this contract by limiting work as provided for in Sections 104, 105, 107, 156, and 157.

Commencement of work cannot begin until May 1, 2023.

108.01A Labor. (Added Subsection).

Follow the requirements of FAR Clause 52.222-6 Construction Wage Rate Requirements.

Adjacent or virtually adjacent work sites, as used in FAR Clause 52.222-6, are defined to be work sites within ½ mile of the project. Application of Construction Wage Rate Requirements (Davis-Bacon Act) for work sites beyond ½ mile of the project will be determined by the CO.

Pay rates and zone pay used in the General Wage Decision are based on the “Center of the job.” The “Center of the job” is:

- (a) The geographic center of the project when construction sites are contiguous; or
- (b) The geographic center of the project when construction sites are noncontiguous and separated by no more than 1-mile from edge to edge.

Construction sites that are noncontiguous and separated by greater than 1-mile will each have a separate “Center of the job” for the purposes of determining pay rates and zone pay.

- (c) The geographic center for each job site is as follows:

- (1) Route 101 is 55 miles from the County Courthouse in Lewistown, MT.
- (2) Siparyann Creek is 58 miles from the County Courthouse in Lewistown, MT.
- (3) Rock Creek is 59 miles from the County Courthouse in Lewistown, MT.
- (4) Seven Mile is 65 miles from the County Courthouse in Lewistown, MT.
- (5) Nichols Creek is 67 miles from the County Courthouse in Lewistown, MT.
- (6) Sand Creek is 57 miles from the County Courthouse in Lewistown, MT.

108.03 Determination and Extension of Contract Time. Add the following to paragraph (c):

No adjustment in contract time or amount will be made for stop orders issued under Subsection 108.05(a) or (b), except an adjustment in contract time, as provided by FAR Clause 52.249-10 Default (Fixed-Price Construction), may be made when the Contractor is able to demonstrate that the weather was unusually severe based on the most recent 10 years of historical data.

108.04 Failure to Complete Work on Time. Delete this Subsection and substitute the following:

Follow the requirements of FAR Clause 52.211-12 Liquidated Damages — Construction.

Liquidated damages in the amount specified in Table 108-1 will be assessed for each day beyond the time specified in the contract until substantial completion of the work.

Liquidated damages will not be assessed for the following:

- (a) The day of the final inspection.
- (b) Days required to perform work added to the contract after substantial completion including items identified during the final inspection that were not required before that time.
- (c) Delays by the Government after all work is complete and before a formal acceptance is executed.
- (d) Periods of time when all work is complete but acceptance is delayed pending the plant establishment period or similar warranty period.
- (e) During winter shutdown periods ordered by the CO.

Table 108-1
Charge for Liquidated Damages for Each Day
Work Is Not Substantially Completed

Original Contract Price		Daily Charge
From More Than —	To and Including —	
\$ 0	\$ 1,000,000	\$ 1,000
\$ 1,000,000	\$ 2,000,000	\$ 1,800
\$ 2,000,000	\$ 5,000,000	\$ 3,500
\$ 5,000,000	\$ 10,000,000	\$ 4,400
\$ 10,000,000	and more	\$ 5,200

108.05 Stop Order. Delete the last paragraph.

108.06 Suspension. (Added Subsection).

Follow the requirements of FAR Clause 52.242-14 - Suspension of Work.

Suspend work, either in whole or in part, for such periods deemed necessary due to human burials, cultural resources, historic properties, paleontological remains, archeological specimens, or active bird nests discovered within the construction area. See Subsections 107.02 and 107.10(e).

Section 109. — MEASUREMENT AND PAYMENT

04/02/21— FP-14

109.01 Measurement of Work. Delete the text of this Subsection and substitute the following:

Take and record measurements and perform calculations to determine pay quantities for invoicing for work performed. Take or convert all measurements of work according to U.S. Customary (Metric) measure.

Unless otherwise specified, measure when the work is in-place and complete according to the contract. Measure the actual work performed, except do not measure work outside the design limits or other adjusted or specified limits (staked limits). Measure structures to the lines according to the plans or to approved lines adjusted to fit field conditions.

Take measurements as described in Subsection 109.02 unless otherwise modified by the Measurement Subsection of the Section controlling the work being performed. For individual pay items, the decimal accuracy for measurement of quantities will be determined by the CO. Decimal accuracy for measurement is one decimal beyond the accuracy of the quantity for payment.

Remeasure quantities if it has been determined that a portion of the work is acceptable, but has not been completed to the lines, grades, and dimensions shown in the plans or established by the CO.

Submit measurement notes within 24 hours of completing work that is in-place and complete according to the contract. For on-going work, submit measurement notes weekly. When work is not complete, identify the measurement as being an interim measurement. Submit the final measurement when the installation is completed. Measurement notes form the basis of the Government's receiving report; see Subsection 109.08(d). For lump sum items, submit documentation that supports invoiced progress payments each month.

Use an acceptable format for measurement notes. Include the following minimum information:

- (a) Project number and name;
- (b) Line item number, pay item number and description;
- (c) Date the work was performed;
- (d) Location of the work;
- (e) Measured quantity;
- (f) Calculations made to arrive at the quantity;
- (g) Supporting sketches and details as needed to clearly define the work performed and the quantity measured;
- (h) Names of persons measuring the work;
- (i) Identification as to whether the measurement is interim or final; and
- (j) Signed certification statement by the persons taking the measurements and performing the calculations, that the measurements and calculations are correct.

Special Contract Requirements

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

Prepare pay item measurement notes on Form FHWA 17-348 *Daily Record of Measurement and Payment*. An electronic version of the form is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

109.02 Measurement Terms and Definitions. Delete paragraph (o) and substitute the following:

(o) Square foot and Square yard (Square meter). 1 square yard equals 9 square feet. Measurements for area computations will be made horizontally or vertically to the surface being measured. No deductions from the area computation will be made for individual fixtures having area of 9 square feet (1 square meter) or less. Do not measure overlaps.

109.06 Pricing of Adjustments. Add the following after the third paragraph:

At the preconstruction conference, furnish the following information to the CO, which will be used to price future adjustments and contract modifications.

- **Overhead.** Furnish the CO with a copy of the current certified or audited jobsite and home office overhead costs for the Contractor and Subcontractors. Provide supporting data, which justifies the costs. List costs that are included in overhead and identify the cost pool(s) to which overhead is applied.
- **Equipment.** Furnish the CO with a complete descriptive listing of equipment to be used by the Contractor and Subcontractors, including the make, model, and year of manufacturer of each piece of equipment, including attachments to the base equipment. Furnish the following cost information:
 - *Rented Equipment.* Provide current invoices to support rented or leased equipment costs.
 - *Owned Equipment.* Determine allowable ownership and operating costs for Contractor- and Subcontractor-owned equipment using actual equipment cost data determined from the operating cost records. If actual equipment cost data is not available, provide the CO with a statement signed by the highest officer or official in the company that such cost data is not available. Also provide a complete set of supporting documentation containing all ownership records that are available, including any purchase records, depreciation records, maintenance records, or other records that relate to the ownership and operating costs for each piece of equipment. When actual costs cannot be determined, use the rates shown in the U.S. Army Corps of Engineers Construction Equipment Ownership and Operating Expense Schedule (CEOES) for the region where costs are incurred. Adjust the rates for used equipment and for other variable parameters used in the schedules. Provide the CO with a completed WFLHD Form 103, proposed CEOES rates for each piece of equipment with supporting calculations, and any other necessary documentation about the equipment to calculate allowable ownership and operating costs using CEOES.

An electronic version of the WFLHD Form 103 form is available at:
<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

For equipment that is not planned to be used at the time of the preconstruction conference, but is later used on the project, provide required information and data prior to mobilizing the equipment to the project.

109.08 Progress Payments. Amend as follows:

Delete paragraph (b) and substitute the following:

(b) Closing date and invoice submittal date. The closing date for progress payments will be designated by the CO. Include work performed after the closing date in the following month's invoice. For work performed between September and July of any year, submit invoices to the designated billing office by the 7th day after the closing date. Invoices received by the designated billing office after the 16th day following the closing date, for work included in the September through July invoices, will not be accepted for payment processing that month. For work included in the August invoice, submit the invoice to the designated billing office by the 5th day after the closing date. Invoices received by the designated billing office after the 5th day following the closing date, for work included in the August invoice, will not be accepted for payment processing that month. Include late, unprocessed invoice submittals in the following month's invoice.

Delete paragraph (e) and substitute the following:

(e) Processing progress payment requests. No payment will be made for work unless field note documentation for the work was provided by the closing date.

(1) Work performed between September and July.

(a) Invoices received by the 7th day following the closing date.

(1) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractors' invoice agree with the corresponding quantities and unit prices shown on the Governments' receiving report, the invoice will be paid.

(2) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), or if any of the quantities or unit prices shown on the Contractors' invoice exceed the corresponding quantities and unit prices shown on the Governments' receiving report, the invoice will be deemed defective and the Contractor so notified according to FAR Clause 52.232-27(a)(2). Defective invoices will not be corrected by the Government and will be returned to the Contractor within 7 days after the Government's designated billing office receives the invoice.

Revise and resubmit returned invoices by the 18th day following the closing date. The CO will evaluate the revised invoice. If the invoice still does not meet the requirements of Subsection 109.08(c), the Contractor will be so notified according

to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the revised invoice meets the requirements of Subsection 109.08(c), but still has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing by the 23rd day following the closing date. The Contractor will be notified by the 23rd day following the closing date of the reasons for any changes to the invoice.

(b) Invoices received between the 8th and 16th day following the closing date.

(1) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractors' invoice agree with the corresponding quantities and unit prices shown on the COs' receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

(2) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232 27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(c), but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing within 7 days after receiving the invoice. The Contractor will be notified, within 7 days of the Government's receipt of the invoice, of the reasons for any changes to the invoice.

(2) Work performed during August.

(a) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the CO's receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

(b) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232 27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(c), but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing within 7 days after receiving the invoice. The Contractor

will be notified, within 7 days of the Government's receipt of the invoice, of the reasons for any changes to the invoice.

Delete paragraph (f) and substitute the following:

(f) Partial payments. Invoices may include the following:

(1) Progress payments may include partial payment for material to be incorporated in the work, provided the material meets the requirements of the contract and is delivered on, or near, the project site or stored in acceptable storage places.

Partial payment for material does not constitute acceptance of such material for use in completing items of work. Partial payments will not be made for living or perishable material until incorporated into the project.

(2) Partial payment for preparatory work. Partial payment for preparatory work does not constitute acceptance of work.

Individual and cumulative partial payments for preparatory work and material will not exceed the lesser of:

- 80 percent of the contract bid price for the item; or
- 100 percent of amount supported by copies of invoices submitted.

The quantity paid will not exceed the corresponding quantity estimated in the contract.

Submit pay notes according to Subsection 109.01. Provide a cost breakdown of the bid item components and submit invoices or other documents supporting the partial payment.

The CO may adjust partial payments as necessary to protect the Government.

109.09 Final Payment. Add the following after the first paragraph:

Payment for individual pay items will be based on the awarded unit price for each pay item according to the following table.

Decimal Accuracy of Quantities for Payment

Awarded unit price	Decimal Accuracy of Quantities for Payment
< \$1.00	0 decimals
≥ \$1.00 to < \$100.00	1 decimals
≥ \$100.00 to < \$1000.00	2 decimals
≥ \$1000.00	3 decimals

DIVISION 150 PROJECT REQUIREMENTS
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Section 152. — CONSTRUCTION SURVEY AND STAKING

7/30/21-FP14

152.01 Add the following:

The work also includes: providing, configuring, and maintaining Robotic Total Station (RTS) equipment, Global Positioning System (GPS) equipment, or both, for exclusive use by the CO when Automated Machine Guidance (AMG) methods are employed; and training the CO on the use of the provided equipment.

Construction survey methods are defined as follows:

- (a) Automated Machine Guidance (AMG) method.** Grading equipment controlled with robotic total station (RTS) technology, global positioning system (GPS) technology, or a combination of the two.
- (b) Conventional survey methods.** All other survey methods.

Construction Requirements

152.02 Qualifications. Add the following:

Conform to the following:

- (a) Personnel.** Provide a crew supervisor on the project whenever surveying and staking is in progress.
- (b) Equipment.** Furnish survey instruments and supporting equipment capable of achieving the specified tolerances.

Construction equipment controlled with AMG methods may be used in earthwork and the construction of subgrade; constructing subbase, base, and surface aggregate courses; or other construction operations when approved.

- (c) Material.** Furnish acceptable tools and supplies of the type and quality suitable for highway survey work. Furnish stakes and hubs of sufficient length to provide a solid set in the ground with sufficient surface area above ground for necessary legible and durable markings.

152.04 General. Delete the text of this Subsection and substitute the following:

Include staking activities in the construction schedule submitted according to Section 155. Include the dates and sequence of each staking activity.

At the preconstruction conference, submit a cost breakdown of the work included in the lump sum item for the purpose of making progress payments.

(a) Government set reference lines and points. The Government has set horizontal and vertical control points for the project. The location and identity of each control point are shown on the plans.

Before beginning construction, notify the CO of any missing control points or stakes. The Government will reestablish control points and stakes missing before the beginning of construction.

(b) Government furnished information. The Government will furnish the design data described below:

- (1)** Proposed horizontal alignment(s) and profile grade(s) in Portable Document Format (.pdf) and LandXML (.xml) formats;
- (2)** Cross Sections in Portable Document Format (.pdf);
- (3)** Earthwork end area volume report in Portable Document Format (.pdf);
- (4)** X, Y, Z coordinates of subgrade and base layer(s) points at centerline and shoulders, in Portable Document Format (.pdf) or Microsoft Excel (.xlsx) format;
- (5)** Proposed finished surface in LandXML (.xml) format;
- (6)** Existing ground surface in LandXML (.xml) format; and
- (7)** Control Point coordinates in Microsoft Excel (.xlsx) format.

Perform additional conversions and calculations as necessary for convenient use of Government-furnished data. The Contractor is responsible for the accuracy of all information converted from the Government-furnished data. Provide immediate notification of apparent errors in the furnished data.

(c) Pre-survey meeting. Before surveying or staking, discuss and coordinate the following with the CO:

- (1)** Surveying and staking methods;
- (2)** Stake marking;
- (3)** Grade control for courses of material;

- (4) Referencing;
- (5) Structure control;
- (6) Field staking data;
- (7) Localization of the GPS systems to the Government-established control points; and
- (8) Other procedures and controls necessary for the work.

Do not start work until staking or three-dimensional (3D) verification data for the affected work has been approved.

Preserve initial reference and control points. Notify the CO of missing control points or stakes at least 10 days before beginning construction. The Government will reestablish control points and stakes missing before the beginning of construction.

Acceptance of the construction staking does not relieve the Contractor of responsibility for correcting errors discovered during the work and for bearing additional costs associated with the error.

Maintain legibility of stake markings for the duration of the project or until notified in writing the stakes are no longer needed. Replace stakes if necessary to ensure markings are maintained.

Record survey and measurement field data in an approved format. Sample note formats are available as listed in Subsection 106.01. Submit as-staked data and corrections made to the Government-furnished survey data. Submit survey and measurement data at least weekly.

The construction survey and staking work may be spot-checked for accuracy, and unacceptable portions of work may be rejected. Resurvey rejected work, and correct work that is not within the tolerances specified in Table 152-1.

Remove and dispose of flagging, paint, lath, stakes, and other staking material after the project is complete.

Compute and furnish calculations supporting pay quantities. Measure quantities within the tolerances established by the CO according to Subsection 109.01.

Adjust roadway prism excavation quantities for volume changes resulting from slope stake variations. See Subsections 152.05(d) and 204.16(a)(1)(a).

152.05 Survey and Staking Requirements. Amend as follows:

Add the following after the first paragraph:

When AMG methods are used, provide for exclusive Government use, all surveying equipment (such as robotic total station, GPS, data collectors, and reflectors), software, and data files necessary for Government quality assurance inspection of the grading work. Provide equipment

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of the same make, model and version being used to construct the project. Provide equipment at least two-weeks before starting work that relies on the equipment. Continuously ensure that data provided to the Government is the same version being used to construct the project. Maintain all equipment in good working order and provide replacements to the CO within two working days when breakdowns occur. The CO will return all supplied equipment upon project completion.

Provide two separate 8-hour training sessions on the use of the contractor-provided surveying equipment. Provide the first training session within one week after delivering equipment to the site. Provide the second training session upon request of the CO. Provide training on the project site by a manufacturers' representative or as approved by the CO.

Add the following to paragraph (c):

Do not take roadway cross-sections unless required for volume adjustments. See Subsections 152.05(d) and 204.16(a)(1)(a).

Payment

152.08 Delete the second paragraph and substitute the following:

Payment for lump sum items will be prorated based on the submitted cost breakdown for the work completed under this Section.

Section 153. — CONTRACTOR QUALITY CONTROL

4/02/21-FP14

Delete the text of this Section and substitute the following:

Description

153.01 This work consists of planning and implementing a construction quality process to ensure work conforms to the contract requirements. This work also includes quality control (QC) inspection and documentation, process control sampling and testing, obtaining samples for QC testing, and performing QC tests. See FAR Clause 52.246-12 Inspection of Construction.

Construction Requirements

153.02 Qualifications. Provide a QC manager (QCM) with at least three years' experience in areas of material testing, inspection, management, supervision, and QC.

153.03 Quality Control Plan (QCP).

(a) Personnel. Provide a QCM, on-project during work, with authority to stop non-compliant work, or work that results in non-compliance with contract requirements. Submit a letter, from a company officer or official with higher authority than the Superintendent, that authorizes the QCM to stop work.

Identify an alternate, meeting QCM qualifications, to act as QCM in the QCM's absence. Do not use an alternate as the QCM for more than three (3) days unless approved by the CO.

At least 14 days before starting work, submit names and qualifications of the QCM, and any alternate being used on the project. Do not use QC personnel that have not been approved by the CO.

At the preconstruction conference, submit a cost breakdown of the individual items included in the lump sum.

(b) Development. At least 14-days before starting a work feature, develop and submit a QCP for each work feature listed below, to be approved by the CO. The absence of a plan does not relieve the Contractor of complying with the contract requirements. Additional QCPs, and/or activities, may be required to provide effective quality management. The CO may request a QCP for additional work features that are not listed below.

(1) Control of Material (Section 105);

(2) Construction Survey and Staking (Section 152);

(3) Soil Erosion and Sediment Control (Section 157);

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- (4) Clearing and Grubbing (Section 201);
- (5) Removal of Structures and Obstructions (Section 203);
- (6) Excavation and Embankment (Section 204);
- (7) Structure Excavation and Backfill (Sections 208, 209);
- (8) Riprap (Section 251);
- (9) Concrete, Steel, and Timber Structures (Sections 552, 553, 554, 555, 557, 563, 564);
- (10) Drainage Structures (Sections 602, 604, 605, 608);
- (11) Minor Structures (Section 609);
- (12) Topsoil and Turf Establishment (Section 624);
- (13) Permanent Traffic Control (Sections 633, 634); and
- (14) Temporary Traffic Control (Sections 156, 635).

Provide a QCP for each work feature in a format approved by the CO.

Include process control sampling and testing in the QCP. Perform process control sampling and testing according to Subsection 153.05 and the QCP.

153.04 Prosecution of Work. Complete the following:

(a) Preparatory and Start-up Phase. Thoroughly address the following activities (1 through 3) for each work feature, and denote in the plan the person/position performing each activity.

(1) Check and verify that submittals, plans, and materials certifications meet contract requirements, then submit these documents at least 7 days before installation unless otherwise stated in the contract. Certify compliance by completing and signing Form WFLHD-87. An electronic version of the form is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

(2) Conduct pre-work meetings. Review contract requirements with the construction crew, foremen, and Government personnel before beginning work. Conduct additional pre-work meetings as necessary and when crew(s) change.

(3) Ensure construction methods will result in end-products meeting contract requirements.

Include the following in the plan for applicable work features:

(a) A brief narrative of how the work will be accomplished describing the methods, crews, and equipment.

(b) The process to ensure the completed feature of work conforms to contract requirements.

(c) The inspection and testing frequency to ensure the process remains valid or work is being performed according to the established process.

(d) The action(s) to be taken and alterations to the inspection and testing frequency, if inspection or testing reveals the work is not meeting contract requirements.

Revise QC plans when personnel, activities, or processes change or when deficiencies occur in the work.

(b) Implementation. Implement QC activities as described in the accepted plan. Do not begin a work feature until the plan is approved by the CO and a pre-work meeting (activity 2) is performed. In the QC Reports described below, document when each activity (1 through 3) was performed, and by whom.

(1) QC Reports. Report the results of QC inspections that verify the work meets contract requirements as QC activities are performed. Describe the results of reviews, inspections, measurements, and testing activities. Attach original support data and test results. Document QC pre-work meetings, and discussions with the construction staff and Government personnel. Document deficiencies found in the work and describe corrective actions, adjustments to frequency of QC activities, and method or process changes to correct and eliminate future deficiencies. Provide reports to the CO daily or as otherwise approved. Include the following certification signed by the QCM:

“I certify that the information contained in this record is accurate and that work documented herein complies with the contract. Exceptions to this certification are documented as a part of this record.”

(2) Notification of Completion of Work. Submit a completed “*Notification of Completion of Work*” (Form WFLHD 470) when the phase of work listed below is ready for inspection. An electronic version of WFLHD 470 is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

Allow 1 working day for the following work to be inspected.

(a) *Survey and staking (field stakes and notes).* Provide survey notes for the following:

- (1) Control points – before disturbing original control points;
- (2) Clearing limits – before starting clearing and grubbing operations;
- (3) Slope stakes – before clearing operations or topsoil removal;
- (4) Subexcavation – after staking and prior to backfilling;
- (5) Bridge – before starting work on each component;
- (6) Walls – before starting work;
- (7) Fence and Gates – before starting installation; and

(8) Culverts – before starting installation.

(b) *Construction work.*

(1) Erosion control devices – prior to any ground disturbing activities;

(2) Sub grade – before placing pavement structure;

(3) Structural excavation – before backfilling; and

(4) Forms and reinforcing steel – before placing concrete.

The CO may request submission of a form WFLHD 470 for work not specifically listed in this Subsection, or may not require a form for the listed work.

153.05 Sampling and Testing. Perform process control sampling and testing according to the *Sampling, Testing, and Acceptance Requirements* table included at the end of each Section.

Perform QC sampling and testing as defined in the QCP.

Allow the CO the opportunity to witness all sampling and/or testing. When requested, sample and split QC samples according to AASHTO or other acceptable procedures. Immediately perform splits when required. Deliver and label split QC samples according to Subsection 154.03.

Provide the following documentation:

(a) Test Results. Label test results with the same information required by Subsection 154.03. Attach work sheets, used to determine test values, to the test result forms when submitted.

(b) Control Charts. Maintain linear control charts identifying project number and name; pay item number; test number; each test parameter; upper and/or lower specification limits applicable to each test parameter; and test results. Use control charts to document process variability; identify production and equipment problems; and identify potential pay factor adjustments. Correct processes when problems exist. Post charts at the Contractor's project testing lab and on site.

153.06 Acceptance. Contractor QC will be evaluated under Subsections 106.02 and 106.04 based on the demonstrated ability of the Contractor's QC system to ensure that work meets the contract requirements.

If Government testing and inspections (quality assurance) indicate the Contractor's QC system is ineffective or the plans are not being followed; make immediate improvements to correct inadequacies. Submit written notifications of improvements and modifications to the system.

A maximum of 10 percent of the total progress payment amount will be retained and affected project work may be stopped if a QCP is not accepted, the plan is not being followed, or work does not meet contract requirements.

Measurement

153.07 Measure the Section 153 items listed in the bid schedule according to Subsection 109.02.

Payment

153.08 The accepted quantities, measured as provided in Subsection 109.02 and above, will be paid at the contract price per unit of measurement for the Section 153 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Payment for the lump sum item will be prorated based on the work completed for this Section.

Section 154. — CONTRACTOR SAMPLING AND TESTING

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Construction Requirements

154.02 General. Add the following to the second paragraph:

Provide representative samples according to the individual Sections ordering the work.

154.03 Sampling. Add the following:

When samples are required at the Vancouver Laboratory, send to:

Material Section
Western Federal Lands Highway Division
610 East Fifth Street
Vancouver, Washington 98661

If samples are sent other than through normal delivery vendors, call 360-619-7747 or 360-619-7762 before delivery. Deliveries will be accepted from 7:00 a.m. to 2:30 p.m. PT (Monday through Friday).

Access to the Government complex is controlled; check-in is required at the main building entrance located on East Fifth Street. Directions will be given for delivery of samples.

The sampling frequencies and reporting times are listed in the Sampling, Testing, and Acceptance Requirements tables included at the end of each Section.

Section 155. — SCHEDULES FOR CONSTRUCTION CONTRACTS

04/02/21(1)– FP-14

Delete this Section and substitute the following:

Description

155.01 This work consists of scheduling, monitoring, and reporting all construction activities. Follow the requirements of FAR Clause 52.236-15, Schedules for Construction Contracts.

Construction Requirements

155.02 Preliminary Work Plan. Only mobilization, temporary traffic control, and Section 637 work, is allowed before a preliminary work plan is accepted.

A preliminary work plan is a written narrative of contract activities for the first 45 days after the Notice to Proceed has been issued. Include the following:

- (a) A title page stating FWS CMR 61520(1) project number, project name, Contractor name, current fixed completion date, date of submittal, submittal number, and “Preliminary Work Plan”.
- (b) Describe proposed work within each activity including the type and quantity of equipment, labor, and materials to be used.
- (c) Describe planned production rates by pay item quantities (e.g. cubic yards (cubic meters) of roadway excavation per day).
- (d) Describe the number of work days per week, holidays, number of shifts per day, and number of hours per shift. Include all calendars used in the schedule module.
- (e) Estimate idle and partially-idle periods within each activity, showing start and end dates.
- (f) Describe expected and critical delivery dates for equipment or material that can affect timely completion of the project. Describe the fabrication and delivery of key and long-lead procurement activities.
- (g) Identify the Vendor, Supplier, or Subcontractor to perform an activity. State assumptions made in scheduling their work.
- (h) Describe site mobilization.
- (i) List shop drawing, sample submittals, and review times.

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Submit a preliminary work plan at least 7 days before the preconstruction conference. Within 7 days after the preconstruction conference, the preliminary work plan will be accepted or rejected. If rejected, submit a revised plan within 3 days.

155.03 Initial Construction Schedule. Prepare a construction schedule according to Subsection 155.06. Within 20 days after the Notice to Proceed has been issued; submit three paper copies, one electronic copy according to Subsection 103.06, and one electronic copy in the native file format. When discrepancies exist, paper copies govern over electronic copies of the schedule.

Show completion of work within the contract time.

Allow 10 days for approval or rejection of the schedule. If rejected, submit a revised schedule within 10 days.

If an acceptable schedule is not received within 30 days after the Notice to Proceed is issued, the CO may withhold approval of progress payments in full or in part.

155.04 Baseline Schedule. Set the approved initial construction schedule as the baseline schedule for the first updated construction schedule. Submit revisions to the baseline schedule as needed, and allow 7 days for revised baseline schedules to be approved for use. Replace the baseline schedule for construction schedule updates with the applicable, approved baseline schedule revisions.

155.05 Updated Construction Schedule. Prepare a construction schedule according to Subsection 155.06, including proposed logic and time estimate revisions if necessary. Show actual start and finish dates for activities. Verify the remaining duration of uncompleted activities.

Update the written narrative for activities in progress, and activities not started, describing schedule changes from the last submitted schedule.

Submit three paper copies, one electronic copy according to Subsection 103.06, and one electronic copy in the native file format, by the 15th day of each month, or when the following occurs:

- (a) A delay occurs in the completion of a critical (major) activity.
- (b) A delay occurs which causes a change in the critical path for the CPM schedule.
- (c) The actual prosecution of the work is different from that represented on the current construction schedule.
- (d) An addition, deletion, or revision of activities is caused by a contract modification.
- (e) There is a change in the schedule logic.

Show completion of work within the contract time.

Allow 7 days for approval or rejection of the schedule. If rejected, submit a revised schedule within 7 days.

If an acceptable construction schedule update is not received by the 15th day of the month, the CO may withhold approval of progress payments in full or in part.

155.06 Construction Schedule Requirements. A construction schedule is a Critical Path Method (CPM) schedule and a written narrative. Include the following:

(a) A CPM schedule including the following:

(1) A title page or header block with FWS CMR 61520(1) project number, project name, Contractor name, current fixed completion date, date of submittal, and submittal number.

(2) Show activity descriptions. Relate activities or groups of activities to contract pay items. Include activities for submittals, submittal reviews, fabrication, and deliveries. Do not include activities for continuous, non-critical items such as flagging, traffic control, QA/QC, etc.

(3) Show activity name or description with the activity bar on the CPM diagram.

(4) Group activities by area (i.e., separate distinct bridges or roadways), and by type of work (i.e., submittals, utilities, roadway, bridge).

(5) Show original and remaining durations for construction activities. Break construction activities into subtasks with no activity duration exceeding 20 working days. Break longer activities into two or more activities distinguished by location or some other description.

(6) Show original and remaining durations of non-construction activities. Non-construction activities include: mobilization; shop drawing and sample submittals by contract pay items for the fabrication and delivery of key materials. Non-construction activities may have durations exceeding 20 working days consistent with the contract. Indicate intended submittal dates and delivery dates for fabrication and delivery activities. Allow for review of each submittal according to the contract.

(7) Begin the construction schedule with the date of the Notice to Proceed and conclude with a milestone that shows the planned completion date.

(8) Show early start and finish dates.

(9) Show late start and finish dates.

(10) Show total float and free float.

(11) Show relationship lines (each activity must have at least one predecessor and one successor activity, except for the Notice to Proceed and planned completion date).

(12) Use a time scale to graphically show the work scheduled for performance.

(13) Show the sequence and interdependence of all activities.

(14) Identify the critical path, which is defined as the longest sequence of activities in the schedule that determines the project duration.

(15) Show the baseline bars in the construction schedule updates.

Float is a shared commodity and is not for the exclusive use of the Contractor or the Government. Either party has the full use of float until it is depleted.

(b) A written narrative stating the basis and assumptions underlying the schedule including:

(1) Describe proposed work within each activity including the type and quantity of equipment, labor, and materials to be used.

(2) Describe planned production rates by pay item quantities (e.g. cubic yards (cubic meters) of roadway excavation per day).

(3) Describe the number of work days per week, holidays, number of shifts per day, and number of hours per shift. Describe all calendars used in the schedule module and list the calendar used for each activity in the schedule module.

(4) Estimate idle and partially-idle periods within each activity, showing start and end dates.

(5) Describe expected and critical delivery dates for equipment or material that can affect timely completion of the project.

(6) Identify the Vendor, Supplier, or Subcontractor performing an activity. State assumptions made in scheduling their work.

(7) Describe organizational limitations, such as resource constraints or subcontractor commitments, which limit scheduling flexibility.

(8) Describe site mobilization.

(9) Provide a list and description of constraints used in the CPM scheduling software.

155.07 Contractor's Daily Record of Construction Operations. For each day of work, submit a completed Form WFLHD 465 *Contractor's Daily Record of Construction Operations (CDR)* or an approved alternate form within one day of the work being performed. Report operations of work separately, with manpower and equipment assigned to each operation separately. Document inspection results, including deficiencies observed and corrective actions taken. Complete a CDR for each contractor and subcontractor working that day. CDR's will be approved or rejected by CO. Correct rejected CDRs and resubmit the revised CDR within 24 hours.

Certify each CDR with the following statement signed by the person responsible for the construction operation:

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"I certify that the information contained in this record is accurate, and that all work documented herein complies with the requirements of the contract. Any exceptions to this certification are documented as a part of this record."

Electronic versions of the form are available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

155.08 Acceptance. Construction schedules and preliminary work plans will be evaluated under Subsection 106.02. CDR's will be evaluated under Subsection 106.02 and 106.03.

Measurement

155.09 Measure the Section 155 items listed in the bid schedule according to Subsection 109.02.

Payment

155.10 The accepted quantities will be paid at the contract price per unit of measurement for the Section 155 pay item listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Progress payments for construction schedule will be paid as follows:

- (a) 25 percent of the item amount, not to exceed 0.5 percent of the original contract amount, will be paid after the initial construction schedule is approved.
- (b) Payment of the remaining portion of the lump sum will be prorated based on the total work completed.

Payments made for construction schedules do not affect any rights the government may have because of failure to meet construction schedule contract requirements.

Section 156. — PUBLIC TRAFFIC

11/12/20– FP14

Construction Requirements**156.04 Accommodating Traffic During Work.** Add the following:

Immediately open the road to emergency vehicles.

(a) Route 101. Construction caused delays according to Subsection 156.07(i) are permitted.

(b) Allowable Closures. The following locations may be closed as follows after coordinating closures with the CO. Perform work at these locations after closing these location.

(1) Between July 6 and September 14 (dates inclusive). Route 201, from the intersection with Route 101, to the intersection with Route 202, may be closed for 50 consecutive days to perform work at Siparyann Creek and Rock Creek.

(2) Between July 6 and November 2 (dates inclusive).

(a) Route 201, from the intersection with Route 304, to the intersection with Route 204, may be closed for 10 consecutive days to perform work at Seven Mile.

(b) Route 201, from the intersection with Route 204 to the intersection with Route 205, may be closed for 15 consecutive days to perform work at Nichols.

(c) Route 220 may be closed for 44 consecutive days to perform work at Sand Creek.

156.07 Limitations on Construction Operations. Amend as follows:

Delete Subsection (i) and substitute the following:

(i) Limit construction-caused delays to public traffic on Route 101 as follows (dates inclusive).

(1) July 19 through August 31. Maximum of 3 hours per passage through the project.

(2) September 1 through November 16. Maximum of 30 minutes per passage through the project.

Add the following:

(k) Do not perform construction operations that cause delays or otherwise interferes with public traffic from 6:00 p.m. July 3 through 6:00 a.m. July 5 for Independence Day Holiday.

(l) For the following locations, do not perform construction operations that cause delays or otherwise interferes with public traffic from 6:00 p.m. Friday through 6:00 a.m. Tuesday for Labor Day Holiday.

(1) Route 101.

(2) Seven Mile, Nichols, and Sand Creek locations listed under Subsection 156.04(b)(2).

(m) For purposes of facilitating traffic, perform grading or surfacing part-width at a time. Make the width not under construction available to public traffic under alternate one-way control. Furnish pilot car and driver, or flaggers, or both, as ordered by the CO, to direct traffic through sections of road under one-way control.

156.09 Traffic Control Supervisor. Amend as follows:

Delete the second sentence in the first paragraph.

Add the following:

(l) Transport personnel, flagging, construction signs, barricades, drums, cones, tubular markers, and other traffic control devices.

Section 157. — SOIL EROSION AND SEDIMENT CONTROL

06/15/22(5)– FP-14

Material

157.02 Add the following to the material list:

Filter Rock	705.08
Seed	713.04

Construction Requirements

157.03 **Qualifications.** Delete this Subsection and substitute the following:

Provide an Erosion Control Supervisor (ECS) certified as a Montana Department of Environmental Quality (DEQ) SWPPP Administrator.

157.04 **General.** Delete the text of this Subsection and substitute the following:

Provide and install permanent and temporary measures to control erosion, sedimentation, and discharge of pollutants, according to the state National Pollutant Discharge Elimination System (NPDES) construction storm water permit, the project Storm Water Pollution Prevention Plan (SWPPP) of record, and this contract.

Immediately report to the CO any incident of non-compliance with the construction storm water permit that may endanger health or the environment. Provide copies of any correspondence or reports required by either the construction storm water permit or the SWPPP.

Provide an ECS to manage installation, maintenance, inspection, and reporting for erosion and sediment control measures, maintain and update the SWPPP of record, and prepare any documentation required by the construction storm water permit or the SWPPP. Furnish the ECS's name, project office address, 24-hour telephone number(s), and qualifications at the preconstruction conference.

If wood chips are used, do not import without approval of the CO.

157.05 **Controls and Limitations on Work.** Delete the text of this Subsection and substitute the following:

(a) Install all sediment perimeter control measures prior to clearing, grubbing, and grading activities. Install additional erosion and sediment control measures as needed during construction.

(b) Before conducting land clearing and disturbance, mark all clearing limits in the field. Mark trees, wetlands, sensitive areas, and buffer zones for preservation as shown on the plans. Preserve existing vegetation wherever possible.

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- (c) Stabilize and maintain construction access points between unpaved and paved sites to minimize tracking of mud and dirt onto public roads.
- (d) Phase construction activities to minimize the amount and duration of soil exposed to erosion. Establish final grade as soon as practicable and apply temporary or permanent soil stabilization measures. Limit the combined grubbing, grading, excavating, borrow, and fill within the construction limits to 5 acres (2.0 hectares) of exposed soil at one time.
- (e) Divert runoff around exposed soils.
- (f) Commence temporary or permanent soil stabilization measures immediately if no further disturbance of an area of the site or stockpile is expected within the next 14 days. Complete the installation of temporary or permanent soil stabilization measures to disturbed sites or stockpiles within 7 days of last disturbance. Provide for temporary stabilization of all exposed soil prior to winter construction shut down.
- (g) Construct and maintain perimeter protection and locate erodible stockpiles away from storm drain inlets, waterways, and drainage channels.
- (h) Handle and dispose of all pollutants, including construction materials, waste materials, and construction debris, in a manner that does not cause contamination of storm water.
- (i) Apply fertilizers and other chemicals in a manner and at application rates that will not result in loss of chemicals to storm water runoff. Follow manufacturers label requirements except as otherwise required by the contract.
- (j) Do not discharge concrete wastewater near or into waterways or wetlands. Submit proposed washout areas to the CO for approval.

157.11 Waterway and Slope Protection and Stabilization. Delete paragraph (c) and substitute the following:

- (c) **Check dams.** Construct riprap, filter rock, gravel bags, sandbags, fiber rolls and socks, or earth berms for temporary check dams to reduce the velocity of runoff in ditches and swales.

157.14 Inspection and Reporting. Delete this Subsection and substitute the following:

- (a) Inspect the following areas of the project:
 - (1) All areas where soil has been disturbed and that has not been permanently stabilized;
 - (2) All erosion and sediment control measures and pollution prevention measures;
 - (3) Government-provided material, waste, borrow, staging and maintenance areas;
 - (4) All areas where storm water typically flows within the site;

(5) All points of storm water discharge from the site; and

(6) All locations where temporary stabilization measures have been implemented.

(b) Inspect all erosion and sediment control measures at least once every 7 days or once every 14 days and within 24 hours of a storm event of 0.25 inches (6 millimeters) or greater as determined by an on-site rain gauge, and/or when there is runoff from snowmelt sufficient to cause a discharge. Specify the inspection schedule that will be used in the project SWPPP, and use the same schedule throughout the duration of construction.

Submit completed inspection reports within 24-hours of performing an inspection.

(c) Inspections may be temporarily reduced in accordance with the General Permit and the following conditions:

(1) If all construction activities at the site are temporarily inactive or shutdown and all areas of disturbance have achieved temporary stabilization as defined by the General Permit the site can be inspected at a reduced frequency of once every 30 days;

(2) If portions of the site are temporarily inactive or shutdown and these portions have achieved temporary stabilization in accordance with the General Permit, those portions of the site may be inspected at the reduced frequency of once every 30 days;

(3) If portions of the site are completed and controls are implemented to achieve final stabilization in accordance with the General Permit, those portions of the site may be inspected at the reduced frequency of once every 30 days;

(4) If an inspection is not possible due to remote site access and severe winter conditions, a delayed inspection must occur once the site is accessible.

Document the reason for the reduction in inspection frequency and locations (if applicable) in the SWPPP. Resume the normal inspection schedule in accordance with the General Permit once construction activities resume and/or the site is accessible.

157.15 Maintenance and Cleanup. Delete this Subsection and substitute the following:

Maintain the functionality of erosion and sediment control measures, and clean measures that are half-full of sediment, until final acceptance or until disturbed sites are stabilized according to the CO. Remove and dispose accumulated sediment according to Subsection 204.14.

Implement maintenance of erosion and sediment control devices or other corrective action within the following time requirements:

(a) In the event of discharge of sediment or other pollutants, immediately take steps to prevent further discharge until a permanent solution is installed and made operational;

(b) Begin corrective maintenance of sediment and erosion control devices within 24 hours of discovery and complete as soon as possible, but no later than 7 days from time of discovery. Make revisions to the SWPPP according to the CGP.

Upon approval of the CO, remove and dispose of erosion and sediment control devices and structures according to Subsection 203.05. Restore the ground to its natural or intended condition and provide permanent erosion control measures.

157.16 Acceptance. Delete the text of the first paragraph and substitute the following:

Material for erosion and sediment control measures will be evaluated under Subsections 106.02 and 106.03. Do not provide a copy of the certifications for erosion and sediment control materials to the CO, unless otherwise directed by the CO.

DIVISION 200 EARTHWORK

Section 201. — CLEARING AND GRUBBING

01/01/14– FP-14

Construction Requirements

201.08 Delete the second paragraph and substitute the following:

Where the new construction follows the existing road, exclude that portion of the old roadbed within the clearing and grubbing limits from the measurement width. Also exclude the area of any body of water and non-vegetated portions of its shoreline within the clearing and grubbing limits.

Section 204. — EXCAVATION AND EMBANKMENT

11/12/20– FP-14

Construction Requirements

204.06 Roadway Excavation. Delete the second to last paragraph and substitute the following:

Conserve sufficient quantities of 6-inch (150-millimeter) minus material from the roadway excavation to use for finishing the roadbed. Sufficient quantities are available within the roadway excavation. Dispose of unsuitable or excess excavation material according to Subsection 204.14. Replace shortage of suitable material caused by premature disposal of roadway excavation.

204.11(c) Less than 50 percent retained on a No. 4 (4.75-millimeter) sieve. Delete the third paragraph and substitute the following:

Use compression-type or vibratory rollers. Compact each layer of material full width to at least 95 percent of the maximum density. Determine the in-place density and moisture content according to AASHTO T 310 or other approved test procedures.

204.13 Sloping, Shaping, and Finishing. Delete paragraph (d) and substitute the following:

(d) Finishing. Remove material larger than 6 inches (150 millimeters) from the top 6 inches (150 millimeters) of the roadbed. Remove unsuitable material from the roadbed, and replace it with suitable material.

(1) AMG method. Finish roadbeds that are compacted according to Subsections 204.11(b) and (c) to within ± 0.05 foot (± 15 millimeters) of the design line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within ± 0.10 foot (± 30 millimeters) of the design line and grade. Finish ditch cross-sections to within ± 0.10 feet (± 30 millimeters) of the design line and grade. Maintain proper ditch drainage.

(2) Conventional survey method. Finish roadbeds that are compacted according to Subsections 204.11(b) and (c) to within ± 0.05 foot (± 15 millimeters) of the staked line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within ± 0.10 foot (± 30 millimeters) of the staked line and grade. Finish ditch cross-sections to within ± 0.10 feet (± 30 millimeters) of the staked line and grade. Maintain proper ditch drainage.

Measurement

204.16 Add the following to paragraph (a)(1)(a):

Use the design volume. The design volume is defined as the bid schedule quantity less any allowance, as shown in the summary of quantities sheet of the plans. This volume is subject to adjustments resulting from changes to slope stakes according to Subsection 152.05(d).

Special Contract Requirements

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

<p>DIVISION 250 SLOPE REINFORCEMENT AND RETAINING WALLS</p>
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Section 251. — RIPRAP

11/05/15– FP-14

Construction Requirements

251.03 General. Add the following:

Place riprap under or adjacent to structures before placing prefabricated superstructure units or constructing superstructure falsework.

DIVISION 500 RIGID PAVEMENTS

Section 501. — MINOR CONCRETE PAVEMENT

04/02/21-FP14

Construction Requirements

501.06A Sampling. (Added Subsection).

Take samples for compressive strength according to Table 501-2. Provide the appropriate initial curing of concrete cylinders taken for compressive strength testing, and transport the cylinders to the project curing facility.

Provide suitable containers to protect and continue the curing of cylinders while transporting. Deliver cylinders to a certified local testing laboratory. Ensure cylinders arrive at the Laboratory at least 1 business day before the designated test date.

DIVISION 550 BRIDGE CONSTRUCTION

Section 552. — STRUCTURAL CONCRETE

11/08/21-FP14

Construction Requirements

552.03 Composition (Concrete Mix Design). Amend as follows:

Delete the first paragraph and substitute the following:

Design and produce concrete mixtures that conform to Tables 552-1, 552-2, and 552-3 as required for the class specified. Determine design strength values according to Section 4 of ACI 301, *Specifications for Structural Concrete*.

Delete Table 552-1 and substitute the following:

Table 552-1
Composition of Concrete

Class of Concrete	Minimum Compressive Strength @ 28-Days, f'c psi (MPa)	Maximum Water/Cementitious Material Ratio	Coarse Aggregate Size Number AASHTO M 43 ⁽¹⁾
A	4500 (31.0)	0.45	5, 56, 57, 6, 67, 68
A(AE)	4500 (31.0)	0.45	5, 56, 57, 6, 67, 68
A (Drilled Shafts)	4500 (31.0)	0.45	8, 89
C	4500 (31.0)	0.45	7, 78
C(AE)	4500 (31.0)	0.45	7, 78
D(AE) ⁽²⁾	5000 (34.5)	0.40	5, 56, 57, 6, 67, 68
P (Prestressed) ⁽³⁾	See plans	—	6,7,67,68,78
P(AE) ⁽³⁾	See plans	—	6,7,67,68,78
S (Seal)	—	0.54	5, 56, 57

(1) Meet the processing requirements of AASHTO M 43, *Table 1 – Standard Sizes of Processed Aggregate*.

(2) The maximum water-soluble chloride ion (Cl⁻) content is 0.15 percent by mass of cement. Determine the water-soluble chloride ion content of concrete made with mix ingredients at an age between 28 and 48 days according to ASTM C1218. Submit test results with the concrete mix design for approval.

(3) The maximum water-soluble chloride ion (Cl⁻) content is 0.06 percent by mass of cement. Determine the water-soluble chloride ion content of concrete made with mix ingredients at an age between 28 and 48 days according to ASTM C1218. Submit test results with the concrete mix design for approval.

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Delete the first sentence of the third paragraph and substitute the following:

Verify mixture design with trial mixes prepared according to Section 4 of ACI 301 from proposed sources or with previous concrete production data for the mixture design submitted from proposed sources.

Delete item (w) from the third paragraph and substitute the following:

(w) Specified design strength (f'_c) and required average strength (f'_{cr}) for the concrete mixture at 28 days as determined by the process described in Section 4 of ACI 301. This process and associated calculations are outlined on FHWA Form 1608, pages 4 and 5. Pending 28-day strength results, a mix design may be approved on the basis that 7-day compressive strength results meet or exceed 85 percent of the required average strength (f'_{cr}) at 28 days;

552.08 Delivery. Add the following to paragraph (a):

Do not exceed 300 total revolutions, including both mixing and agitating speed.

552.09 Quality Control of Mix. Add the following:

(c) **Curing and Shipping.** Provide the appropriate initial curing of concrete cylinders taken for compressive strength testing, and transport the cylinders to the project curing facility. Provide suitable containers to protect and continue the curing of cylinders while transporting. Deliver cylinders to the Vancouver Laboratory according to Subsection 154.03. Cylinders will be tested at 7, 14, and 28 days from the date molded. Ensure cylinders arrive at the Vancouver Laboratory at least 1 business day before the designated test date.

552.11(b)(6) Delete this Subsection and substitute the following:

(6) Precast elements.

(a) *Plant Casting.* Use a precast concrete manufacturing plant certified by the Precast/Prestressed Concrete Institute Plant Certification Program with a “B-4 Prestressed Deflected-Strand Bridge Beams (Superstructure)” certification. Use the same precast plant for the fabrication of all the precast elements used in the bridge system. Submit proof of certification prior to starting production.

(b) *Site Casting.* Do not utilize site casting plants.

(c) *Tolerances.* Fabricate precast bridge elements conforming to the tolerances of Tables 552-10, 552-11, and 552-12. The CO will reject any element fabricated outside of specified tolerances.

Place and consolidate concrete so that shrinkage cracks are not produced in the member.

Verify that the prefabricated elements will fit-up and align properly before shipping from the precast facility. Assembling each superstructure and substructure composed of prefabricated elements in the yard prior to shipping the elements to the project site

would be a suitable way for performing such verification. If assembled in the yard, use blocking to simulate the support of the elements and the spacing between the elements. Verify all elements are constructed in compliance with all plan requirements. Dry fit all connections in the fabrication yard prior to installation of the elements at the bridge site.

Table 552-10
Precast Bent Cap Fabrication Tolerances

Length	$\pm\frac{3}{4}$ in (19 mm)
Width (overall)	$\pm\frac{1}{4}$ in (6 mm)
Depth (overall)	$\pm\frac{1}{4}$ in (6 mm)
Variation from specified plan end squareness or skew	$\pm\frac{1}{4}$ in/12" width (± 6 mm/300 mm width) $\pm\frac{1}{2}$ in max. (± 6 mm max.)
Variation from specified elevation end squareness or skew	$\pm\frac{1}{4}$ in/12 in width (± 6 mm/300 mm width) $\pm\frac{1}{2}$ in max. (± 13 mm max.)
Location of grouted splice coupler measured from a common reference point	$\pm\frac{1}{2}$ in max. (± 13 mm max.)
Local smoothness of any surface	$\pm\frac{1}{4}$ in in 10 ft (± 6 mm in 3 m)
Erection elevation tolerance	$\pm\frac{1}{4}$ in (± 6 mm)

Table 552-11
Precast Abutment and Wall Elements Fabrication Tolerances

Length	±¼ in (±6 mm)
Width (overall)	±¼ in (±6 mm)
Depth (overall)	±¼ in (±6 mm)
Variation from specified plan end squareness or skew	±⅛ in/12 in width (±3 mm/300 mm width)±½ in max. (±13 mm max.)
Variation from specified elevation end squareness or skew	±¼ in/12 in width (±6 mm/300 mm width) ±½ in max.
Location of grouted splice coupler measured from a common reference point	±¼ in (±6 mm)
Local smoothness of any surface	±¼ in in 10 ft (±6 mm in 3 m width)
Location of blockouts for piles or voids	±1 in (±25 mm)

Table 552-12
Precast Approach Slab Fabrication Tolerances

Length	±¼ in (±6 mm)
Width (overall)	±¼ in (±6 mm)
Depth (overall)	±¼ in (±6 mm)
Variation from specified plan end squareness or skew	±½ in (±13 mm)
Location of leveling bolts	±1 in (±25 mm)
Sweep over member length	±¾ in (±10 mm)
Location of projecting reinforcing measured from a common reference point	±½ in (±13 mm)
Local smoothness of any surface	±⅛ in in 10 ft. (±3 mm in 3 m)
Erection elevation tolerance (surface approach slab only)	±⅛ in (±3 mm)
Location of blockouts	±½ in (±13 mm)

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(d) *Submittals.* Submit fabrication and installation drawings for approval according to Subsection 104.03.

(1) *Fabrication drawings.* Show all details necessary for fabrication, including the following:

- (a) Details and location of all lifting holes, inserts, hardware, devices, and any additional reinforcing required for lifting. Include supporting calculations and lifting procedures.
- (b) Describe the method of curing, handling, storing, and transporting the elements.
- (c) Leveling inserts in the deck and leveling procedure.
- (d) Details of vertical elevation adjusting hardware.
- (e) Minimum compressive strength to be attained prior to handling precast concrete deck and deck overhang elements.
- (f) Details of structural steel, shear connectors, bearing assemblies, and elastomeric bearing pads.
- (g) Concrete volume, reinforcing steel weight and total section weight for each element.

Do not order materials or begin work until receiving final approval of the shop drawings.

(2) *Assembly Plan.* Prepare an assembly plan under the seal of a licensed Professional Engineer. Submit 5 sets for approval 28 days before fabrication. Describe all details necessary for assembly, including the following:

- (a) A work area plan depicting utilities overhead and below the work area, drainage inlet structures, protective measures, temporary staging areas, crane locations, and other features of the site necessary for successful assembly.
- (b) Details of all equipment and devices (including slings, hooks, and jacks) used for lifting and assembling the superstructure, substructure and approach slabs. Include the make, model, lift capacity, and operating radii.
- (c) Computations showing the magnitude of stress in the prefabricated components during erection is within allowable limits, and that all of the erection equipment has adequate capacity for the work to be performed.
- (d) Detailed sequence of construction activities, and a Critical Path Method (CPM) schedule according to Section 155 for all operations. Include setting and cure time for grout, concrete closure pours, splice couplers, and fill of pile pockets.
- (e) Methods of providing temporary support of the elements. Include methods of adjusting, bracing and securing the element after placement.
- (f) Procedures for controlling tolerance limits.
- (g) Methods of forming closure pours and fill concrete, and sealing lifting holes.

(h) Methods for curing grout, closure pours, and lifting hole concrete.

(i) A list of personnel that will be responsible for grouting the reinforcing splice couplers. Include proof of completion of two successful installations within the last 2 years. Training of new personnel within 3 months of installation by a manufacturer's technical representative is an acceptable substitution for this experience. In this case, provide proof of training.

(e) *Quality Assurance.*

(1) Permanently mark each element with date of fabrication, supplier identification and module identification. Stamp markings in fresh concrete.

(2) Prevent cracking or damage of precast components during handling and storage.

(3) Replace or repair defective or broken precast concrete deck and concrete deck overhang elements according to Section 106. Requests to repair defective or broken elements are subject to the following:

(a) Obtain approval before performing concrete repairs.

(b) Concrete repair work must reestablish the module's structural integrity, durability, and aesthetics to the satisfaction of the CO.

(c) Describe the cause of damage and the corrective action taken to eliminate future damage.

(d) An updated CPM schedule showing the effects of repair work on project completion.

(4) Elements will be rejected if they do not conform to the contract documents, and for the following reasons:

(a) Elements fabricated before the date that shop drawings are approved.

(b) Full-depth cracking of concrete, and concrete breakage that is not repairable.

(c) Cracks that extend to the nearest reinforcement plane, or fine surface cracks that do not extend to the nearest reinforcement plane but are numerous or extensive.

(d) Camber that does not meet the requirements of the plans or fabrication drawings.

(e) Honeycombed texture.

(f) Dimensions exceeding the allowable tolerances.

(g) Damage during fabrication, transportation, erection, or construction.

(5) Document all test results for structural concrete. Show in the quality control files at least the following information:

(a) Element identification.

(b) Date and time of fabrication concrete pour.

(c) Concrete cylinder test results.

- (d) Concrete mix design and the batch print out.
- (e) Form-stripping date.
- (f) Location and number of blockouts and lifting inserts.
- (g) Temperature, moisture, and duration of curing period.
- (h) Approved repair procedures.

(f) *Handling, storing and transporting.*

(1) *Damage/Cracking.* Prevent cracking or damage of prefabricated elements and modules during handling, storing and transporting.

(2) *Precast Element Sizes.* Finalize the size of precast elements with consideration for shipping restrictions, equipment availability and site constraints. Show the final element sizes on the assembly plan.

(3) *Lifting Devices.* The design and detail of the lifting devices is the responsibility of the Contractor. Use lifting devices in a manner that does not cause damage, cracking or torsional forces. Place the lifting devices in locations that are not visible once the prefabricated element is placed, or within recessed pockets that can be patched after installation.

(4) *Safety.* The Contractor is responsible for the safety and stability of prefabricated elements during all stages of handling, transportation and construction.

(5) *Handling and Storing.* Store the precast units in a horizontal and upright position, supported at their designated bearing points. Follow Chapter 5 of the *PCI Design Handbook* for handling and erection bracing requirements.

Lift the precast elements so that the angle between the top surface of the precast element and the lifting line is not less than 60 degrees when measured from the top surface of the precast elements to the lifting line. If two cranes are used, then the lifting lines shall be vertical. Lift the modules at the designated points. The Contractor is responsible for handling stresses in the modules. Choose the locations of the lifting points so that the anticipated flexural tensile stress induced in the top of the structural concrete for the assumed support locations is not greater than the allowable stress.

Select smooth and well compacted storage areas to prevent damage due to differential settlement. Support precast elements during storage to prevent cracking or creep induced deformation (sagging). Check precast elements at least once per month to ensure that creep-induced deformation does not occur.

Protect the elements from freezing temperatures for 5 days after casting or until precast concrete attains design compressive strength. Do not remove thermal protection any time before the units attain the specified compressive strength when the surrounding air temperature is below 20 °F (-6 °C).

Elements may be loaded on a trailer as described below. Use shock-absorbing material at all bearing points during transportation. Locate the tie-down straps at the lines of blocking only. Replace or repair units damaged during storage or handling.

(g) *Transportation.* Move elements after the concrete reaches a minimum compressive strength of 4500 pound per square inches (31.0 megapascals) or as provided in the project plans.

Transport modules horizontal with beams on the bottom side for support. Support the modules at approximately the same points they will be supported when installed.

552.11(e)(1) Tremies. Delete the text of this Subsection and substitute the following:

Use watertight tremies, with a diameter sufficient to ensure that aggregate-induced blockages will not occur. Use multiple tremies as required. Make tremies capable of being rapidly lowered to retard or stop the flow of concrete.

Seal the discharge end and fill the tremie tube with concrete at the start of concrete placement. Keep the tremie tube full of concrete to the bottom during placement. If water enters the tube, withdraw the tremie and reseal the discharge end. Maintain continuous concrete flow until the placement is completed.

552.15 Curing Concrete. Add the following:(d) **Precast concrete curing.**

(1) Use an approved method of curing that prevents loss of moisture and maintains an internal concrete temperature at least 40 °F (4 °C) during the curing period.

(2) When using accelerated heat curing, do so under a suitable enclosure. Use equipment and procedures that will ensure uniform control and distribution of heat and prevent local overheating. Ensure the curing process is under the direct supervision and control of an individual certified by PCI for Plant Quality Personnel, Level I or higher.

(3) When accelerated heat is used to obtain temperatures above 100 °F (38 °C), record the temperature of the interior of the concrete using a system capable of automatically producing a temperature record at intervals of no more than 15 minutes during the curing period. Space the systems at a minimum of one location per 100 feet (30 m) of length per unit or fraction thereof, with a maximum of three locations along each line of units being cured. Ensure all systems, when calibrated individually, are accurate within ±5 °F (±3 °C). Do not artificially raise the temperature of the concrete above 100 °F for a minimum of 2 hours after the units have been cast. After the 2-hour period, the temperature of the concrete may be raised to a maximum temperature of 160 °F (71 °C) at a rate not to exceed 25 °F (15 °C) per hour. Lower the temperature of the concrete at a rate not to exceed 40 °F (22 °C) per hour by reducing the amount of heat applied until the interior of the concrete has reached the temperature of the surrounding air.

(4) In all cases, cover the concrete and leave covered until curing is completed. Do not under any circumstances remove units from the casting bed until the strength requirements are met.

552.16 Finishing Formed Concrete Surfaces. Amend as follows:

Delete the first paragraph and substitute the following:

Finish sound, formed concrete surfaces as described below. If any finished concrete surface that is exposed to view (e.g., piers, columns, web walls, etc.) has become streaked and unsightly due to spilled mortar, leaching, or some other cause, clean and refinish the concrete according to the appropriate class.

Delete paragraph (a) and substitute the following:

(a) Class 1 - Ordinary surface finish. Finish the following surfaces with a Class 1 ordinary surface finish:

- (1) Under surfaces of slab spans, box girders, filled spandrel arch spans, and the roadway deck slab between superstructure girders;
- (2) Inside vertical surface of T-girders of superstructures; and
- (3) Surfaces to be buried and culvert surfaces above finished ground that are not visible from the traveled way or a walkway.

Begin finishing as soon as the forms are removed. Remove fins and irregular projections from all surfaces that are exposed or will be waterproofed. Remove bulges and offsets with carborundum stones or discs. Remove localized, poorly-bonded rock pockets and honeycombed concrete, and replace with sound concrete or packed mortar. Fill all holes with mortar in the same cement/aggregate ratio as the concrete being finished, and float to an even, uniform finish. A bonding agent may be used with the approval of the CO.

Clean and point form tie cavities, holes, broken corners and edges, and other defects. Saturate the area with water. Finish the area with mortar that is less than 1-hour old. After the mortar is set, rub it (if required) and continue curing. Match exposed surfaces to surrounding concrete.

Carefully tool and remove free mortar and concrete from construction and expansion joints. Leave joint filler exposed for its full length with clean, true edges.

Rub or grind bearing surfaces on piers and abutments to the specified elevation and slope.

If the final finished surface is not true and uniform, rub it according to Subsection 552.16(b).

Delete paragraph (b) and substitute the following:

(b) Class 2 - rubbed finish. Finish the following surfaces with a Class 2 rubbed finish:

- (1) Surfaces of bridge superstructures except those surfaces designated to receive a Class 1 or other finish;
- (2) Surfaces of bridge piers, piles, columns and abutments, and retaining walls above finished ground and to at least 12 inches (300 millimeters) below finished ground;

- (3) Surfaces of open spandrel arch rings, spandrel columns and abutment towers;
- (4) Surfaces of pedestrian undercrossings except floors and surfaces to be covered with earth;
- (5) Surfaces above finished ground of culvert headwalls and endwalls when visible from the traveled way or walkway;
- (6) Inside surfaces of culvert barrels higher than 48 inches (1200 millimeter) that are visible from the traveled way. Finish for a distance inside the barrel at least equal to the height of the culvert; and
- (7) Surfaces of railings.

Complete a Class 1 finish according to Subsection 552.16(a).

Create a Class 2 rubbed finish according to steps (1) through (6), below.

- (1) Thoroughly wash the surface of the concrete with water. Proceed with step (2) only after completing other work that could affect the surface;
- (2) Brush on a mortar approved by the CO at a 1:1 cement/aggregate ratio.
- (3) Brush on no more mortar than can be finished in 1 day;
- (4) Rub the mortar with burlap or a piece of carpet as soon as it takes initial set (before it reaches final set);
- (5) Fog-spray water over the finish as soon as the mortar has reached final set; and
- (6) Keep the surface damp for at least 2 days.

If the mortar becomes too hard to rub as described in step (4), then rub the surface with a carborundum stone and water until form marks, projections, and irregularities are removed. Random grinding is not permitted. Leave a uniform surface free from all unsound patches, paste, powder, and objectionable marks.

Continue with the Class 2 rubbed finish until the entire surface has a smooth texture and uniform color.

When steel forms have been used and the surface has a smooth, uniform texture and color including the surface of the filled holes, steps (1) through (6) above may be omitted with the approval of the CO.

552.18 Loads on New Concrete Structures. Add the following:

For bridge approach slabs do not allow traffic on new concrete earlier than 14 days after concrete placement unless concrete tests indicate one of the following conditions is obtained:

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- (a) Flexural strength of 550 pounds per square inch (4 megapascals) according to AASHTO T 97; or
- (b) Compressive strength of 4000 pounds per square inch (28 megapascals) according to AASHTO T 22.

Do not allow traffic on the approach slab when joint sealant is tacky and traffic debris would imbed into the sealant.

552.20 Acceptance. Add the following to Table 552-9 Note (2):

Transportation of specimens to laboratory may exceed time limits specified in AASHTO T 23.

Section 555. — STEEL STRUCTURES

06/15/22-FP14

Delete the text of this Section and substitute the following:

Description

555.01 This work consists of designing, fabricating, delivering and installing a prefabricated vehicular bridge superstructure at the project site. Construct the length, width, capacity of the structure including curbs as shown on the drawings. Include all incidental materials required to provide a completed structure ready for use.

The bridge superstructure consists of girders with diaphragms as required by the design. The bridge deck will consist of bridge decking topped by treated timber running planks and continuous curbs as shown on the drawings and according to these specifications.

The fabricator must coordinate with the contractor for delivery of all materials for the bridge superstructures to the site. The bridge materials to be delivered include bearing plates, bearing pads, girders/diaphragms/bolts/washers/nuts/etc., decking, treated timber running planks, and curbs and curb supports with all associated connection hardware.

The manufacturer of the prefabricated modular steel bridges must have a minimum of five years of continuous experience in the design and construction of similar prefabricated steel bridges, and comply with Subsection 555.11.

Material

555.02 Conform to the following Sections and Subsections:

Bearing Devices	564
Bolts and nuts	717.01(b)
Bridge Railing	556
Elastomeric Bearings, Plain or Laminated	717.10(a)
Painting	563
Structural Steel	717.01(a)
Temporary Works	562
Timber Structures	557

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Construction Requirements

555.03 Timber Certifications. Furnish the following compliance certificates to the CO upon delivery of the materials:

(a) Verification of compliance with grading rules and species of timber and lumber. Provide certification by an agency accepted as competent by the American Lumber Standards Committee (ALSC).

(b) Lot certification of each charge for preservative, penetration in millimeters, and retention in pounds per cubic foot (assay method) by a qualified independent inspection and testing agency. In addition, have the producer of the treated products provide written certification that Best Management Practices (BMP's) in accordance with "Best Management Practices for Treated Wood in Western Aquatic Environments," published by the Western Wood Preservation Institute (WWPI) and Canadian Institute of Treated wood, were followed, including a description and appropriate documentation of the applicable BMP's used.

555.04 Design. Design the prefabricated steel bridge girders according to AASHTO LRFD Bridge Design Specifications (AASHTO LRFD), 9th edition with current interims. A Professional Engineer registered in the state of Montana and experienced and trained in LRFD steel design must sign and seal the design calculations and shop drawings.

Calculate loads and deflections for appropriate STRENGTH and SERVICE limit states according to Section 3 of the AASHTO LRFD Specification and the following:

(a) Distribute loads according to Section 4 of the AASHTO LRFD Specifications.

(b) Camber the girders according to Section 6 of the AASHTO LRFD Bridge Design Specifications for all appropriate limit states. Make girder camber 1.2 times calculated dead load deflection.

(c) Limit the live load deflection to $L/800$. Use a dynamic load allowance of 15 percent in calculating live load deflections.

555.05 Design & Shop Drawing Submittal. Within 21 days of the contract award, submit 3 copies of the complete design and shop drawings for the Contracting Officer to review. Include plan, elevation and section views of the bridge superstructure, dimensions of all components, list of materials and specifications, weight summary, welding and connection details, and general and specific notes regarding design and construction. Allow 30 days for review time. The design and shop drawings must be approved and any corrections made prior to beginning fabrication.

As part of the design submittal, calculate the bridge load rating in accordance with *AASHTO Manual for Bridge Evaluation, 3rd edition*, 2018 including specialized hauling vehicles. Rating factors must be greater than one at the inventory level for the HL-93 loading.

555.06 Fabrication. Fabricate all steel components in a plant that is certified for “Simple Bridge” under the American Institute of Steel Construction (AISC) Quality Certification Program.

Welding and fabrication must conform to the requirements of the Bridge Welding Code AASHTO/AWS D1.5. Use forms in Annex III for submittals, as applicable.

Submit a Quality Control Plan furnished by the bridge manufacturer. Include requirements for personnel qualifications and certifications, and a written practice in accordance with ASNT SNT-TC-1A.

All Procedure Qualification Records and Welder Qualification Test Records must be current within three years of the date of beginning fabrication.

Include a permanent name plate attached to an exterior beam clearly showing the name and address of the manufacturer along with the date of fabrication.

555.07. General. Perform excavation, backfill, and embankment work under Section 208. Dispose of all debris resulting from operations in accordance with Section 203.

555.08 Performance. Provide 2 weeks’ notice to the CO prior to delivery and/or installation. If the prefabricated superstructure is not installed immediately upon delivery to the project site, provide appropriate equipment and labor to unload and stack, support, and store all material at the delivery point. Support and stack all components to prevent damage.

Furnish and install blocking such that all components are supported at least 12 inches above the ground.

Furnish all tools, devices, special equipment, and material needed for installation in well-marked watertight containers suitable for long-term, outdoor storage.

555.09 Contractor-Furnished Prefabricated Bridge Superstructure. As appropriate to the type of modular bridge, mark each major component of the bridge superstructure with the same serial number. Ensure that the marking is permanent and clearly visible on each component, both when stacked in storage and when erected on a bridge site.

555.10 Acceptance. Constructing and erecting the superstructure will be evaluated under Subsections 106.02 and 106.04. Material will be evaluated under Section 106.03.

As applicable, furnish the CO with the following items to be evaluated under Section 106.03 for approval prior to delivery of the bridge component:

- (a) Supplier or inspection agency certification of wood species and grade of all timber and a conformance certificate for all sawn and glued laminated members.
- (b) Certification by the approved inspection and testing agency of wood treatment, listing method of treatment, type of preservative, retention, and penetration. Supplier certification is

permitted if each piece is stamped or branded with a legible American Wood Preservers Bureau quality mark.

(c) Certification of structural steel, fasteners, and hardware.

(d) Certification of galvanizing process used.

(e) Steel fabricator certification that steel fabrication and quality control meet the requirements of the AISC Code of Standard Practice; and that all welding meets the requirements of ANSI/AASHTO/AWS D1.5 Bridge Welding Code.

(f) A complete list of all bridge components, hardware, and fasteners.

(g) Complete erection instructions and drawings. Provide drawings that are black line, on a reproducible media.

Measurement

555.11 Measure the items listed in the bid schedule according to Subsection 109.02.

Payment

555.12 The accepted quantities, measured as provided in Subsection 109.02 and above, will be paid at the contract price per unit of measurement for the Section 571 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

DIVISION 600 INCIDENTAL CONSTRUCTION

Section 622. — RENTAL EQUIPMENT

08/01/14-FP14

Description**622.01** Delete the text of this Subsection and substitute the following:

This work consists of furnishing and operating equipment for the construction work as ordered by the CO and listed below. Work under this Section does not include equipment time used to perform work provided for under any other pay item shown in the bid schedule. The work anticipated under this Section includes additional excavation and hauling work associated with the placement of culverts along Route 101 as determined and directed by the CO.

Construction Requirements**622.02 Rental Equipment.** Delete the text of the first paragraph and substitute the following:

Furnish and operate the following equipment:

<u>Number of Units</u>	<u>Type of Equipment</u>
1	Hydraulic Excavator
1	Dump Truck

Excavator to have a 1 cubic yard minimum capacity with thumb attachment. Submit the model number and serial number for each piece of equipment before use. Make equipment available for inspection and approval before use.

Section 635. — TEMPORARY TRAFFIC CONTROL

11/12/20–FP14

Description

635.01 Add the following:

This work also includes providing the services of a Traffic Control Supervisor.

Material

635.02 Amend as follows:

Delete the following from the material list:

Sign panels	633.05
Sign posts	633.04

Add the following to the material list:

Sign hardware	718.06
Sign panels	718.03
Sign posts	718.04

Construction Requirements

635.07 Construction Signs. Delete the text of this Subsection and substitute the following:

Fabricate and install sign panels according to Subsection 633.05. Use Type III, IV, VIII, IX, or XI prismatic retroreflective sheeting on sign panels. Roll-up signs may be used instead of panels when approved by the CO. For roll-up signs, use Type VI retroreflective sheeting.

Furnish posts conforming to Subsection 718.04, except wood posts may be untreated. Install posts according to Subsection 633.04. Portable sign supports may be used instead of sign posts when approved by the CO.

Remove or completely cover unnecessary signs. Use metal, plywood, or other acceptable material to cover signs. Do not use adhesive glue, tape, or mechanical fasteners that mar the face of the panel of the sign to be covered.

635.08A Traffic Control Supervisor. (Added Subsection).

Perform services described in Subsection 156.09. Provide all vehicles and incidentals necessary to perform the work.

Special Contract Requirements

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

635.23 Acceptance. Delete the first paragraph and substitute the following:

Material for temporary traffic control devices will be evaluated under Subsections 106.02 and 106.03. Do not provide a copy of the certifications for temporary traffic control materials to the CO, unless otherwise directed by the CO.

635.24 Add the following:

Measure Traffic Control Supervisor by the day for the work described in Subsection 156.09.

A day will be measured when:

- (a) Construction operations require a Traffic Control Supervisor during the normal working days;
- (b) The Traffic Control Supervisor makes normal checks during nonwork hours; or
- (c) The Traffic Control Supervisor is called out during nonwork hours.

Do not measure flagging performed by the Traffic Control Supervisor when there is a pay item in the bid schedule for Traffic Control Supervisor.

Section 647. — ENVIRONMENTAL MITIGATION (ADDED SECTION)

08/01/14-FP14

Description

647.01 This work consists of furnishing and placing streambed material and reconstructing streambed channels.

Construction Requirements

647.02 General. Construct erosion control measures according to Section 157. Minimize construction disturbance around streams.

Conserve topsoil according to Section 204. Excavate according to Section 209.

647.03 Stream Channel. Shape constructed channels to blend with natural streambed channels or to the contours shown in the plans.

647.04 Streambed Material. Conserve existing streambed material to be impacted by construction and stockpile in locations approved by the CO. Conserve and stockpile material to prevent segregation. If sufficient conserved streambed material is not available, remove material in areas approved by the CO.

Place streambed material in lifts not exceeding 12 inches. Avoid displacing underlying material. Do not place material by methods that cause material segregation or damage to the culvert wall. Place the streambed material to form a well-graded, compacted, low-permeability mass. Compact each lift by making at least three passes with a vibratory plate compactor, each pass completely covering the placed layer surface. Further compact each lift by pressure washing to force fines into voids spaces through the streambed material. Pumped water shall be washed over all streambed material to carry fine material into the void spaces of the material. Fill surface voids that form from the initial wash with additional fine material and pressure wash into the void spaces of the streambed material. Repeat fine material placement and pressure wash until all voids are filled. Pump shall have a minimum flow of 100 GPM and wash water shall be recirculated to prevent downstream discharge of sediment laden water. Manual placement with hand tools may be required to adequately fill voids of the streambed material with fine sediment material.

Construct a well-defined parabolic shape for a low flow channel by sloping streambed materials placed inside culverts towards the culvert flow line. Shape the top layer so it is similar in appearance and texture to the natural streambed.

Special Contract Requirements

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

647.05 Acceptance. Material and construction will be evaluated under 106.02 and 106.03.

Measurement

647.06 Measure the Section 647 items listed in the bid schedule according to Subsection 109.02.

Payment

647.07 The accepted quantities will be paid at the contract price per unit of measurement for the Section 647 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

DIVISION 700 MATERIAL
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Section 703. — AGGREGATE

11/08/21-FP14

703.02 Coarse Aggregate for Concrete. Delete the text in paragraph (b) and substitute the following:

(b) Grading, AASHTO M 43

All sizes

Section 705. — ROCK

08/01/19-FP14

705.08 Filter Rock. (Added Subsection).

Furnish hard, durable, angular rock that is resistant to weathering and water action and free of organic or other unsuitable material. Angular rock is characterized by sharp, clean edges at the intersections of relatively flat surfaces. Do not use shale, rock with shale seams, or other fissile or fissured rock that may break into smaller pieces in the process of handling and placing. Conform to the following:

- | | |
|--|---|
| (a) Apparent specific gravity, AASHTO T 85 | 2.40 min. |
| (b) Absorption, AASHTO T 85 | 4.0 percent max. |
| (c) Soundness of aggregate using sodium sulfate, AASHTO T 104 (5 cycles) | 12 percent loss max. |
| (d) Los Angeles abrasion, AASHTO T 96 | 50 percent max. |
| (e) Rock particle intermediate dimension (width) and minimum dimension (thickness) | $\frac{1}{3}$ longest dimension (length) min. |
| (f) Gradation | Table 705-4 |

Table 705-4
Gradation Requirements for Filter Rock

Percent of Rock by Mass	Range of Intermediate Dimensions, ⁽¹⁾ inches (millimeters)	Range of Rock Mass, ⁽²⁾ pounds (kilograms)
20	6-8 (150-200)	21-49 (10-22)
30	5-6 (125-150)	12-21 (5-10)
40	3-5 (75-125)	2.6-12 (1-5)
10	2-3 (50-75)	0.8-2.6 (0.4-1)

(1) The intermediate dimension is the longest straight-line distance across the rock that is perpendicular to the rock's longest axis on the rock face with the largest projection plane.

(2) Rock mass is based on a specific gravity of 2.65.

Section 713. — ROADSIDE IMPROVEMENT MATERIAL

11/08/21-FP14

713.04 Seed. Add the following:

Furnish a mixture consisting of the following kinds of seed with the corresponding percentages by weight of “live seed”:

Mountain brome grass, (<i>Bromus carinatus</i>)	35 percent
Bluebunch wheatgrass, (<i>Pseudoroegneria spicata</i>)	25 percent
Western wheatgrass, (<i>Pascopyrum smithii</i>)	15 percent
Rough fescue, (<i>Festuca campestris</i>)	10 percent
Rubber rabbitbrush, (<i>Ericameria nauseosa</i>)	10 percent
Big sage, (<i>Artemisia tridentate</i>)	5 percent

Determine the amount of “live seed” in a container by the following formula:

Net weight of seed in container multiplied by the purity percentage multiplied by the germination percentage. (If seed is 85 percent pure and tests 90 percent germination, then a 100-pound (45.4 kilogram) container would contain 76.5 pounds (34.7 kilograms) of “live seed”.)

Section 716. — MATERIAL FOR TIMBER STRUCTURES

08/01/14-FP14

716.01 Untreated Structural Timber and Lumber. Delete paragraph (3) and include the following:

Provide solid sawn running planks made of Western Larch or Coastal Region Douglas Fir, Rough Sawn, No.2, or better Grade, as specified in the WWPA or WCLIB Grading Rules.

Section 717. — STRUCTURAL METAL

07/21/17-FP14

717.01 Structural Steel. Delete the text of this Subsection and substitute the following:

(a) Structural steel. All structural steel must be new material. Provide certified copies of mill test reports for all structural steel and bolts. All structural weathering steel shapes and plates must conform to the requirements of ASTM A588. If used, all square and rectangular weathering structural steel tubing must conform to the requirements of ASTM A847 structural tubing.

(b) Bolts and nuts. Provide high-strength bolts for all structural field bolted connections. High-strength bolts, heavy hex nuts and hardened washers must conform to the following requirements, unless approved in writing by the Engineer:

- | | |
|--------------------|---------------------------------|
| (1) Bolts | ASTM F3125 Grade A325, Type 3. |
| (2) Nuts | Appropriate class of ASTM A 563 |
| (3) Washers | ASTM F 436 Type 3 |

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PERMITS

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March 28, 2022

SUBJECT: 2021 Nationwide Permit Verification; FHWA – Road Repairs – CMR
National Wildlife Refuge; USACE File No. NWO-2021-02204-MTB

Federal Highway Administration
Attn: Mr. Scott Smithline
610 East Fifth Street
Vancouver, Washington 98661

Dear Mr. Smithline:

We are responding to your request for Reverification of a Nationwide Permit (NWP) 14 for the above-mentioned project. The project includes crossings at Siparyann Creek, Rock Creek, Seven Mile Creek, Sand Creek, Nichols Creek, and near Route 101 in unnamed resources. The project is located at approximately Lat. 47.616866 and Long. -108.449217 in Sections 35 and 36, Township 22 North, Range 24 East; Section 32, Township 22 North, Range 25 East; Sections 2 and 9 Township 21 North, Range 25 East; Sections 7 and 10 Township 21 North, Range 27 East, in Phillips County, Montana.

The project includes multiple culvert replacements and embankment stabilization along existing roadways in the Charles M. Russell (CMR) National Wildlife Refuge (NWR) identified in the application as Highway 101, 201, and 210. Construction activities have been provided in the attached plan sheets. As a result of the proposed work the single and complete projects would result in a total of 0.117 acres of permanent wetland impacts and a total of 0.103 acres of stream impacts. The project would also temporarily impact 0.09 acres of wetlands. Work must be completed as indicated in the plans received on December 28, 2021, and includes the following:

Resource Number	Proposed Work	Impact (Acres)
G2-G4 Stream	Replace two culverts with two 48" CMP's and riprap at inlet and outlet.	Permanent; 0.01
W23/24 and S26/27	Placement of fill at North and South Bridge abutments and channel grading.	Permanent; 0.04
W12/14/15 and S10/11/13/14/16/17/18	Three culvert replacements, steel bridge installation and channel grading	Permanent; 0.06 Wetland and 0.05 Stream

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Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

		Temporary; 0.05 stream and wetland
W15/17 and S19/20	Remove two culvert pipes and replace with one 84" arch pipe	Permanent; 0.02 Temporary; 0.02
W19/20/21/22 and S24/25	60"x48" arch culvert installation and bridge abutment fill	Permanent; 0.03 Temporary; 0.02

Under the authority of Section 404 of the Clean Water Act (CWA), DA permits are required for the discharge of fill material into waters of the U.S. Waters of the U.S. include the area below the ordinary highwater mark of stream channels and lakes, or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis.

Based on the information you provided, the proposed activity, permanently impacting a total of 0.21 acres of wetlands and streams and temporarily impacting a total of 0.09 acres of wetlands and streams, is authorized by NWP 14, found in the January 13, 2021, Federal Register (86 FR 2744), Reissuance and Modification of Nationwide Permits. Enclosed is a fact sheet that fully describes this NWP and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for ensuring that all work is performed in accordance with the terms and conditions of the NWP. If a contractor or other authorized representative will be conducting work on your behalf it is strongly recommended that they be provided a copy of this letter and the enclosed conditions. Failure to comply with the General and Regional Conditions of this NWP, may result in the suspension or revocation of your authorization and may be subject to appropriate enforcement action.

The Montana Department of Environmental Quality has provided the enclosed CWA Section 401 water quality certification for this NWP which includes General Conditions, all of which must be complied with for that certification to remain valid. This does not eliminate the need to obtain other permits that may be required by that agency.

This verification is valid until March 14, 2026, when the existing NWPs are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). Activities completed under the

authorization of an NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

In compliance with General Condition 30, we have enclosed a "compliance certification" form, which must be signed and returned within 30 days of completion of the project, including any required mitigation. Your signature on this form certifies that you have completed the work in accordance with the terms and conditions of the NWP.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at: <https://regulatory.ops.usace.army.mil/customer-service-survey/>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number **NWO-2021-02204-MTB** in any correspondence concerning this project. If you have any questions, please contact Mr. Swade Hammond by email at swade.d.hammond@usace.army.mil or telephone at 701-715-3179.

Sincerely,

Swade Hammond
Senior Project Manager

3 Enclosures:

1. Compliance Certification
2. NWP 14 Fact Sheet with Regional Conditions
3. CWA Section 401 Water Quality Certification

COMPLIANCE CERTIFICATION

USACE File Number: NWO-2021-02204-MTB

Permit Type: NWP 14

Name of Permittee: FHWA – Mr. Scott Smithline

County: Phillips County, Montana

Date of Issuance: March 28, 2022

Project Manager: Mr. Swade Hammond

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to Montana.Reg@usace.army.mil or the following address:

US Army Corps of Engineers
 Billings Office
 PO Box 7032
 Billings, Montana 59103

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the conditions of this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

 Signature of Permittee

 Date

Nationwide Permit 14 (NWP 14) – Linear Transportation Projects

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.)

(Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

2021 Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following

Permits

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1 through 330.6](#) apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work here in authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects from Impoundments. If the activity creates an impoundment of water, adverse

effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or

degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their worldwide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)\(1\)](#)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriated documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include

background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C.306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of

minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of [33 CFR part 332](#).

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\) and \(3\)](#)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(c\)\(2\) through \(14\)](#) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be

environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see [33 CFR 330.4\(e\)](#)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWP's used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWP's used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWP's cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by [33 CFR 332.3\(l\)\(3\)](#) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph(b)(10) of general condition 32. An activity that requires [section 408 permission](#) and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see [33 CFR 330.4\(f\)](#)) and/or section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)](#)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4)(i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear

feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form ([Form ENG 6082](#)) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity’s compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies’ concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at [33 CFR 330.5](#).

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the [Magnuson-Stevens Fishery Conservation and Management Act](#).

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

2021 District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at [33 CFR 332.3\(k\)](#). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration

of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

2021 Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria ([36 CFR part 60](#)).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that

depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at [33 CFR part 329](#).

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at [33 CFR 330.2\(i\)](#) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see [33 CFR 328.4\(c\)\(2\)](#))



US Army Corps
of Engineers®
Omaha District

2021 Nationwide Permits Regional Conditions Omaha District State of Montana

The following Nationwide Permit (NWP) regional conditions will be used in the State of Montana. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs OR LIMITED REVOCATION OF NWPs

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. Wetlands Classified as Peatlands:

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. PCN required for NWP 3, 5, 6, 20, 27, 32, and 38.
- b. All NWPs not listed above are revoked for use in peatlands.

2. Waters Adjacent to Natural Springs:

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For the purpose of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

3. Bank Stabilization Activities:

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High-Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. Stream Channelization and Relocation Projects:

PCN required for any regulated activity that involves permanent stream channelization or relocation of an existing perennial stream channel. For the purpose of this condition, stream channelization is defined as "the manipulation of a stream's course, condition, capacity or location that causes more than minimal interruption of normal stream processes." Examples of stream channelization include, but are not limited to straightening, relocating, shifting, tubing (i.e., placement of a culvert in an open channel for construction purposes).

5. Tribal Reservations and Tribal Trust Lands:

PCN and coordination with the Tribal Authority required for all NWPs requested by applicants other than the Tribal Authority for use within the reservation boundaries and tribal trust lands of Indian Country in Montana.

6. **Specific Waterways:**

PCN required for any regulated activity within the following waterways and their impoundments:

- Bitterroot River
- Clark Fork River (tributary to the Columbia River)
- Flathead Lake
- Flathead River
- Milk River
- Missouri River
- Yellowstone River

B. BEST MANAGEMENT PRACTICES

Required Best Management Practices:

In addition to the Regional Conditions above, additional required best management practices apply to NWP's within the Omaha District. These are available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

1. **Suitable Material:**

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

2. **Bank and Shoreline Stabilization Activities:**

The following additional requirements apply to all bank and shoreline stabilization:

- a. The revetment must conform to the existing bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the system; must not extend above the top of the bank (i.e., no new levees); and the slopes must be flatter than the angle of repose for the selected revetment material (i.e., rock riprap normally needs to be placed on a slope flatter than 1.5 Horizontal to 1 Vertical (1.5H:1V).
- b. The revetment must not wholly or partially block flows from entering a side channel or an overflow channel.

3. **Placement and Removal of Temporary Fills:**

Temporary fills in wetlands must be placed on a horizontal marker layer, such as fabric or certified weed-free straw, to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

4. **Erosion and Sediment Control Blanket:**

All erosion control blanket or fabric used in or adjacent to waters of the United States must be comprised of degradable material to ensure decomposition. Do not use material that includes stabilized netting or stabilized open mesh, as these products take a long time to degrade, and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the United States must be removed.

5. NWP-3 – Maintenance and NWP-45 – Repair of Uplands Damaged by Discrete Events
Definition of “Discrete Event”:

The definition of “discrete event,” as used in these permits, includes, but is not limited to, unexpected natural and human-caused events such as fires, storms, landslides, avalanches, earthquakes, accidents, debris or ice jams, and floods. For the purpose of the NWPs, discrete event floods are stream flow events that overflow the OHWM.

6. Outfall Structures and Associated Intake Structures:

Inlet screens for intakes in the Yellowstone River or the Missouri River in Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, McCone, Petroleum, Phillips, Prairie, Richland, Roosevelt, Valley and Wibaux Counties must be installed on all pump intakes with a screen mesh opening size no larger than 1/4 inch. Water intake velocities must not exceed 1/2 foot per second through the mesh. Intakes must be located in the deepest water available and be elevated off the bottom of the riverbed.

7. Culvert Countersink Depth:

For all NWPs in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	1/2-ft
Pipe diameter <8.0 ft	>640 acres	1-ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1-ft

- a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.
- b. The slope of the culvert should be parallel to the slope of the stream flow line.
- c. The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream flow line.
- d. Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

C. REGIONAL CONDITIONS APPLICABLE ONLY TO THE SPECIAL RIVER MANAGEMENT ZONE OF THE UPPER YELLOWSTONE RIVER

Special River Management Zone (SRMZ) of the Upper Yellowstone River is defined within the Special Area Management Plan (SAMP) as the 48-mile reach of the upper Yellowstone River (River Miles 531.8 to 483.6) from upstream of Emigrant River downstream to a few miles below the Shields River and Mission Creek confluences (0.7 mile downstream from the bridge at the community of Springdale). It includes secondary channels, side channels, and the main (primary) channels, and adjacent wetlands within the channel migration zone (CMZ) or, in absence of a CMZ, within areas flooded by the 100-year discharge. The SMRZ is located entirely within Park County, Montana.

In addition to the Regional Conditions and Best Management Practices above, additional Regional Conditions apply within the SRMZ described above. These are available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

1. Notification – All NWPs:

Permittees must notify the Corps in accordance with General Condition 32 (PCN) for any regulated activity in waters of the United States within the SRMZ. This includes all activities within the Yellowstone River, the portions of tributaries within the SRMZ, and wetlands within the SRMZ.

2. Emergency Work:

Activities requiring a Department of the Army (DA) Permit that is necessary to prevent imminent loss of life or property is allowed within the SRMZ. Contact the Corps as soon as reasonably possible by telephone at 406-441-1375 and/or by Fax at 406-441-1380. Contact may also be made in person or by sending an e-mail to: Montana.Reg@usace.army.mil. All such work will be fully reviewed under the SAMP provisions.

3. NWPs Revoked for Use:

The following NWPs have been revoked for all waters and activities within the 48-mile SRMZ:

NWP 17 - Hydropower Projects

NWP 21 - Surface Coal Mining Activities

NWP 29 - Residential Developments

NWP 39 - Commercial and Institutional Developments

NWP 42 - Recreational Facilities

NWP 43 - Stormwater Management Facilities

NWP 44 - Mining Activities

NWP 44 - Mining Activities

NWP 45 - Repair of Uplands Damaged by Discrete Events

NWP 49 - Coal Remining Activities

NWP 50 - Underground Coal Mining Activities

4. Activities Requiring Individual Permit Review:

The following project activities are not authorized under an NWP in the SRMZ. These projects typically have more than minimal adverse impacts and must be reviewed under standard (individual) permit procedures.

- a. New dams, new diversions, and/or new impoundments for any purpose.
- b. Construction of ponds and new artificial stream channels, unless they are necessary and appropriate elements of a stream or wetland restoration project.
- c. Hydraulic dredging and mining and mechanical excavation to obtain aggregate, fill material, or minerals, including gold. Processing of material for the purpose of obtaining select minerals or a specific gradation of material, where only a portion of the sediment or alluvium is removed and the remainder returned to the SRMZ, is not allowed under an NWP in the SRMZ.

5. Bank Stabilization Activities - All NWPs:

For bank stabilization activities associated with any NWP, including maintenance of bank stabilization, the following Regional Conditions apply:

For bank revetments such as riprap, root wads, bioengineered revetments, or combination revetments, a through e apply:

- a. Revetments must conform to the existing eroded or eroding bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the upper Yellowstone River.
- b. Revetment slopes must be flatter than the angle of repose for the selected revetment material. For example, rock riprap normally needs to be placed on a slope flatter than 1.5H:1V.
- c. Revetments are only permissible under NWPs if they are parallel to and near the lateral boundaries of the SRMZ.
- d. Revetments must not extend above the elevation of the adjacent natural bank height (i.e., no new levees).
- e. Revetments must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.

For bank stabilization structures that project into the stream, such as weirs, barbs, vanes, or hard points, f. through k. apply:

- f. Bank stabilization structures must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.
- g. Bank stabilization structures are only permissible under NWPs if they result in an effective bankline that is approximately parallel to and near the lateral boundaries of the CMZ.

- h. Bank stabilization structures must be keyed into the bank far enough to prevent flanking.
- i. Bank stabilization structures cannot occupy more than 10% of the bankfull channel area. Bankfull channel area pertains to the specific primary or secondary channel in question and is not the aggregate channel area of all primary and secondary channels in multi-channel reaches.
- j. Bank stabilization structures must not present hazardous obstructions to boating, floating, or other river uses.
- k. Bank stabilization structures that are low in elevation, project only a short distance out from the bank, and angle upstream are more likely to qualify for NWPs because they typically result in less adverse impact on aquatic resources than structures that are tall, long, and point downstream.

6. Temporary Bank Stabilization – All NWPs.

Temporary bank stabilization is prohibited during seasonal high flows.

7. Sediment Management – All NWPs:

Sediment removal is allowable only to maintain function of existing facilities and structures, or as necessary to maintain or restore the geomorphic integrity of the upper Yellowstone River. Diversion or removal of sediment or alluvium from the river channel and adjacent wetlands for other purposes is not allowed in the SRMZ under any NWP.

8. Temporary Vegetation Impacts – All NWPs:

Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Where temporary riparian or wetland vegetation impacts are unavoidable, mow or cut off the vegetation above the ground, leaving the topsoil and root mass intact. Restore temporarily disturbed areas to original contours and use seeding and planting as necessary to re-establish desirable vegetative cover, utilizing native species in areas where native species were impacted.

9. NWP-11 – Temporary Recreational Structures:

Temporary recreational structures can be installed no earlier than seven (7) calendar days in advance of an event and must be removed no later than seven (7) calendar days after the event concludes.

10. NWP-12 – Oil or Natural Gas Pipeline Activities; NWP-57 – Electric Utility Line and Telecommunications Activities; and NWP-58 – Utility Line Activities for Water and Other Substances.

Trench excavation and backfill for utility lines is prohibited within the Ordinary High Water Mark of main and secondary flow channels and in adjacent wetlands.

11. NWP-13 – Bank Stabilization:

Construction of temporary or permanent levees is prohibited. Only bank stabilization that is parallel to and adjacent to the valley wall and/or SRMZ boundary is allowed. All other bank stabilization must be reviewed under standard (individual) permit procedures. Bank stabilization along existing roads, ditches, fills, and structures already located along the valley wall is allowed under this Permit.

12. NWP-14 – Linear Transportation Projects.

The construction of new transportation facilities in waters of the U.S. is prohibited under this NWP and must be reviewed under standard (individual) permit procedures. The expansion, modification, improvement, replacement, reconstruction, and upgrading of existing transportation facilities are allowed under this NWP within the SRMZ.

13. NWP- 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities:

The construction of water control structures, dikes, berms, current deflectors, bank stabilization, and ponds is prohibited within the CMZ of the upper Yellowstone River unless it is demonstrated the proposed features contribute to the restoration or rehabilitation of previously lost or impaired functions of the upper Yellowstone River and adjacent aquatic areas.

14. NWP-30 – Moist Soil Management for Wildlife:

Fire breaks within the CMZ of the upper Yellowstone River must be reclaimed and restored within six (6) months after the fire event ends.

15. NWP-33 – Temporary Construction, Access, and Dewatering:

Construction of temporary levees and other structures or fills in waters of the U.S. that prevent or reduce overbank flow is prohibited.

16. NWP 40 – Agricultural Activities:

Only those activities associated with the reduction of existing adverse impacts on the upper Yellowstone River may be authorized by this NWP. Examples of potentially allowable projects include work associated with livestock management; moving livestock watering areas off the river or out of the CMZ; removal of irrigation systems from the CMZ; and the removal or conversion of irrigation systems from flood irrigation to sprinkler irrigation.



December 14, 2020

Sage L. Joyce
Montana State Program Manager
U.S. Army Corps of Engineers, Omaha District
10 West 15th Street, Suite 2200
Helena, Montana 59626-9705

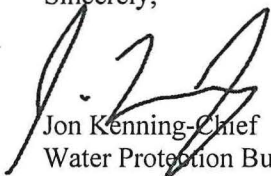
Re: Montana Department of Environmental Quality 401 Water Quality Certification of Proposed Army Corps of Engineers 2020 Nationwide Permits, General Conditions, and Regional Conditions

Dear Ms. Joyce:

The attachment to this letter (Parts A-E) constitutes the Montana Department of Environmental Quality's position on the subject Nationwide Permits. It should not result in an undue burden to either of our agencies, while still providing adequate water quality protection. Also, please find enclosed the Montana Department of Environmental Quality's December 5, 2000, guidelines for materials for stream bank stabilization as referenced in the attached certification.

We look forward to continuing the close cooperation and coordination between our two agencies. Please do not hesitate to contact myself (444-0240 JKenning@mt.gov) or Keenan Storrar (444-2734 Keenan.Storrar@mt.gov) if you have any questions.

Sincerely,



Jon Kenning-Chief
Water Protection Bureau

Cc: Toney Ott - U.S. EPA, 8WD-CWS w/ Attachments

Water Quality Certification in Accordance With Section 401 of the Clean Water Act for the 2020 Nationwide Permits in Montana

40 CFR § 121.7(d)(2)(i) Montana Department of Environmental Quality (DEQ) does not have project specific information that is required in the 'JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES'. Without this information, DEQ cannot identify specific waterways impacted by the project including wetlands and tributary streams or confirm the status of waterways impacted by the project.

A. Certification with General Conditions

DEQ is granting Section 401 Water Quality Certification (certification) with the General Conditions listed in Section E for Nationwide Permits 1-11, 14-20, 22-28, 30-36, 38, 41, 46-49.¹

B. Special Conditions for Specific Nationwide Permits

1) DEQ is granting certification of Nationwide Permit #12 [Oil or Natural Gas Pipeline Activities], Nationwide Permit C (#pending) [Electric Utility Line and Telecommunications Activities], and Nationwide Permit D (#pending) [Utility Line Activities for Water and Other Substances] for projects that do not a) disturb the bed and banks of waterbodies or b) cause a violation of short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities because a static or vibratory plow is used and/or Horizontal Directional Drilling technology is implemented. DEQ denies certification for all other projects that qualify under this Nationwide Permit.¹

2) DEQ is granting certification of Nationwide Permit #13 [Bank Stabilization], Nationwide Permit #21 [Surface Coal Mining Activities], Nationwide Permit #29 [Residential Developments], Nationwide Permit #37 [Emergency Watershed Protection and Rehabilitation], Nationwide Permit #39 [Commercial and Institutional Developments], Nationwide Permit #40 [Agricultural Activities], Nationwide Permit #42 [Recreational Facilities], Nationwide Permit #43 [Stormwater Management Facilities], Nationwide Permit #44 [Mining Activities], Nationwide Permit #45 [Repair of Uplands Damaged by Discrete Events], and Nationwide Permit #50 [Underground Coal Mining Activities] for all projects equal to or less than 300 linear feet.¹

C. Waiver

Nationwide Permit #54 [Living Shorelines], Nationwide Permit A (#pending) [Seaweed Mariculture Activities], Nationwide Permit B (#pending) [Finfish Mariculture Activities] are waived as these Nationwide Permits only apply to coastal shorelines and the Great Lakes.

D. Denial

Nationwide Permit #51 [Land Based Renewable Energy Generation Facilities], Nationwide Permit #52 [Water Based Energy Renewable Energy Generation Facilities], Nationwide #53 [Removal of Low Head Dams], Nationwide Permit E (#pending) [Water Reclamation and Reuse Facilities] are denied for the five year cycle.¹

¹ MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et seq.; ARM 17.30 et. seq.
Permits

E. General Conditions for Nationwide Permits

The following general conditions apply to all certified Nationwide Permits as provided in A and B above:

- 1) DEQ Water Protection Bureau – Discharge Permitting Program must be notified by the permittee for all activities requiring USACE pre-construction notification (PCN)**. Notification shall be at least 30 days prior to the commencement of the activity and include (a) the permittee name and contact information, (b) the project name, (c) the Nationwide Permit(s) used for the project, (d) the Township, Range and Section, (e) the project or regulated activity location in decimal latitude and longitude to the millionth degree (six significant figures to the right of the decimal point) (f) the volume of the discharge, (g) the biological, chemical, physical, and radiological characteristics of the discharge, (h) a description of the existing environment at the site of the discharge, (i) the size of the area affected, (j) the location or locations at which the discharge may enter state waters. Notification of must be submitted by mail to DEQ or electronically through DEQ's Fees, Applications, and Compliance Tracking System (FACTS) website at: <http://deq.mt.gov/Public/FACTS>^{2,3} ****For all projects where a Federal Agency is an applicant, that agency must provide notification and submit a Joint Application to DEQ, regardless of USACE pre-construction notification requirements.**³
- 2) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment facilities in wetlands.³
- 3) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.³
- 4) This certification requires that materials used in stream bank or shore stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 guidelines for materials for stream bank stabilization. Tires may not be used to stabilize any banks in state waters.³
- 5) This certification requires that all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. Equipment cannot continue operating in or near the water if a leak is discovered. All such leaks will be properly repaired prior to equipment being allowed on the project site. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or be removed from the project area. If equipment is to be operated in or near water, a spill containment kit shall be available at the project site and DEQ shall be notified of spills.³
- 6) This certification requires that all permittees shall, to the maximum extent practicable, incorporate and construct design features that eliminate bridge deck run-off containing sediment, salt, or other pollutants from discharging directly into state water. To the extent practicable, bridge deck run-off, should be directed to a detention basin of unspecified size prior to continuing into state waters.³
- 7) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap bedding material. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and dormant plant material and/or root-stock.³

² During FACTS development phase, notifications shall be sent to: DEQWPBPublicComments@mt.gov

³ MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.
Permits

8) The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over a river is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/2-acre.⁴

9) Restored riparian areas shall be stable and should consist of native species.⁴

F. Reopener Clause

DEQ reserves the right to add or alter terms and conditions as appropriate to carry out its responsibilities with respect to water quality throughout the five year Nationwide Permit Cycle.⁴

⁴ MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.
Permits

Policy on Streambank Stabilization

This policy outlines the guidelines for approved materials to be used for streambank stabilization in Montana. This policy and a draft Environment Assessment were provided to the public for comment via public notice MT-00-10 issued September 18, 2000. Comments were accepted until October 17, 2000. The draft Environmental Assessment is adopted as the final Environmental Assessment with the Responses to Comments incorporated.

Signed into policy 12/05/00 by Bonnie Lovelace, Chief, Water Protection Bureau and 12/06/00 by Jan Sensibaugh, Administrator, Permitting & Compliance Division.

GUIDELINES FOR MATERIALS FOR STREAMBANK STABILIZATION

The following guidelines represent the efforts of a work group composed of Conservation District representatives, natural resource consultants, environmental interests, and state and federal regulatory agencies. They are suggested by the Montana Department of Environmental Quality and not necessarily endorsed by all the work group members. These guidelines are only for use in areas where the use of high-density, angular rock is not practicable. (The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes [40 CFR 230.3(q)]). Sandstone or broken concrete may be acceptable alternatives to high-density, angular rock in certain situations, although local regulation may prohibit their use. The use of any river training device/structure may directly or cumulatively alter the ecology of Montana rivers and streams. Cumulative impact considerations may preclude the use of any river training device.

Bank stabilization projects are sometimes authorized under the following jurisdictions: Local Conservation District - Natural Streambed & Land Conservation Act (31O); Montana Department of Fish Wildlife and Parks - Stream Protection Act (SPA124); County Floodplain Administrator - Floodplain Permit; U.S. Army Corps of Engineers - Section 404/10 Permit; Montana Department of Environmental Quality - 75-5-318, MCA Authorization; Montana Department of Natural Resources and Conservation - Navigable Rivers Land Use License/Easement.

The following optional design concepts should be considered in conjunction with the guidelines to minimize environmental/aesthetic concerns:

- Utilize rock only in the lower* portion or toe of the riprap with woody structures/features, biodegradable fabric, etc. in the upper* portions.
* The elevation at which the mean annual flow occurs is the division between "upper" and "lower."
- Incorporate soil in the upper portions of the project with appropriate woody (usually willow) plantings as near average water elevations as possible and herbaceous plantings elsewhere.
- Provide a temporary or permanent buffer strip (streamside area where protection promotes growth and sustenance of woody vegetation) along the project length to provide for vegetation stability where grazing or recreational use may impact plant growth.
- Preferably, plantings should be on slopes of 3:1 or flatter and irrigated, if possible.

(Note: Numerous documents with more detailed information are available. Contact the Natural Resource Conservation Service or the Department of Natural Resources and Conservation for their "Stream Project Manual.")

COMPLIANCE CERTIFICATION

Project: (Please attach copy of the completed "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies.")

Upon completion of project activity, sign this certificate and return it to the following address:

Montana Department of Environmental Quality
Permitting & Compliance Division/Water Protection Bureau
Box 200901
Helena, MT 59620-0901

Please answer the following questions:

1. What is the source of the concrete rubble?
2. What is the type of concrete rubble (curb/gutter, foundation, etc.)?
3. What was the cost of the rubble?
(The recipient of the rubble cannot be compensated for accepting the rubble without a landfill license.)

I hereby certify that the project work performed is in compliance with all applicable permits and in compliance with the "Guidelines for Materials for Streambank Stabilization."

Signature of Project Owner

Date

I hereby certify that I provided the concrete rubble used in the project and that I did not compensate the owner for accepting the rubble.

Signature of Concrete Rubble Provider

Date



February 10, 2022

Scott Smithline
 WESTERN FEDERAL LANDS HIGHWAY DIVISION FHWA
 610 E FIFTH ST
 Vancouver, WA 98661

RE: ***Confirmation Letter, Notice of Intent (NOI) MTR109293; Charles M Russell Refuge Repairs, MT FWS CMR 61520(1)***

Effective January 1, 2021 a sign or other form of notice to publicly display confirmation of coverage is required on site.

Dear Scott Smithline:

The Department of Environmental Quality (DEQ) acknowledges the receipt of your complete application package (NOI and SWPPP) to discharge under the January 01, 2018, General Permit for Storm Water Discharges Associated with Construction Activity (SWC-GP) on February 11, 2022. Your authorization number under the SWC-GP is MTR109293. Please include this number on any correspondence with DEQ regarding this site.

This letter confirms only that a complete NOI has been received. DEQ does not assess the validity of the information you provided other than project location as it relates to sage grouse habitat. Your signature on the NOI certifies that you have read, understand, and are implementing all applicable requirements.

Specifically, the SWC-GP:

- Requires implementation of a Storm Water Pollution Prevention Plan (SWPPP),
- Defines the inspection process, and
- Defines record keeping requirements (refer to Part 2.5 of the General Permit).

The SWC-GP and additional guidance materials can be viewed and downloaded from our FACTS page at <http://deq.mt.gov/Public/FACTS> or the MT DEQ website at <http://deq.mt.gov/Water/StormWater/StormSystems>.

Authorization under the SWC-GP remains in effect until you submit a complete Notice of Termination (NOT). Your signature on the NOT certifies that you have achieved final stabilization, removed your temporary Best Management Practices, and have paid all applicable fees. All effective authorizations are assessed annual fees each calendar year until a complete NOT is received.

Coverage under the SWC-GP does not waive your obligation to obtain coverage under other applicable permits. If you have questions regarding SWC-GP requirements, please contact me at (406) 444-0574 or via email catherine.culver@mt.gov.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Culver".

Cathy Culver

Permits

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

**GENERAL PERMIT
FOR
STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

PERMIT NUMBER MTR100000**

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

**AUTHORIZATION TO DISCHARGE UNDER
THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)**

In compliance with Section 75-5-101 *et seq.*, Montana Code Annotated (MCA); Administrative Rules of Montana (ARM) 17.30.1101; 17.30.1301 *et seq.*; and ARM 17.30.601 *et seq.*, owners and operators (permittees) with authorization under this *General Permit for Storm Water Discharges Associated with Construction Activity* are permitted to discharge storm water resulting from construction activities as described in Section 1.1 of this Permit and subject to effluent limitations, monitoring requirements, and other conditions set forth herein.

This Permit shall become effective January 1, 2018.

This Permit and the authorization to discharge shall expire at midnight, December 31, 2022.

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY



Jon Kenning, Chief
Water Protection Bureau

Issuance Date: July 18, 2017

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1. Coverage Under This Permit

1.1. Eligibility

1.1.1. Construction Activities Covered

This Permit applies to all areas of the State of Montana, except for lands within the external boundaries of Indian Reservations. This permit applies to “storm water discharge associated with construction activity,” as defined in Part 5 of this permit.

A “storm water discharge associated with construction activity” regulated under this permit occurs when both of the following two criteria are met:

- There are areas of ground disturbance or other potential pollutant sources due to the construction activity where a storm water discharge to state surface waters can occur; and
- The construction activity disturbs through clearing, excavating, grading, or placement/removal of earth material a total area equal to or greater than one acre. The “total area” must include all areas which are part of a “larger common plan of development or sale”, as defined in Part 5 of this permit.

Determination of the acreage of disturbance does not typically include disturbance for routine maintenance activities on existing roads where the line and grade or hydrologic capacity of the road is not being altered, nor does it include the paving of existing roads.

In determining the occurrence or potential occurrence of a “storm water discharge associated with construction activity” based on the acreage of ground disturbance and discharge potential to state surface waters, the permittee must consider the following additional factors:

- All potential drainage/discharge conditions and flow patterns, and their variation during the different phases of the construction activity;
- All potential rainfall or snowmelt events and their unpredictability over time (such as experiencing a relatively higher rainfall or snowmelt amount in a relatively shorter time period);
- Support activities for the construction project which may be on or off the conventional construction project “site” (as defined in Part 5 of this permit);
- Storm water discharges must typically be regulated beyond the conventional construction earthwork and building phases, lasting from the initiation of construction-related ground disturbance to “final stabilization” (as defined in Part 5 of this permit) of that disturbance, which can sometimes take significant extra time to achieve; and
- Storm water which discharges into a drain inlet and/or storm sewer system from the site is regulated as a discharge to state surface waters if the inlet or system ultimately discharges into a state surface water.

Support activities can include, but are not limited to, areas used for access-related work, earth material borrow areas, equipment staging areas, materials storage areas, temporary concrete or asphalt batch plants, and any areas used for fill placement. For storm water discharges from support activities to be covered under this permit for a particular construction activity permit authorization, such support activities must:

- Not be part of a larger commercial operation serving multiple unrelated construction activities, and not continue operation beyond the completion of the permittees construction activity; and
- Have appropriate controls and measures identified for the particular support activity, including required documentation, in the Storm Water Pollution Prevention Plan (SWPPP) required in Part 3 of this permit.

1.1.2. Allowable Storm Water Discharges

Unless otherwise made ineligible through the provisions in Part 1.1.4. below, the following discharges are eligible for coverage under this permit:

- Storm water discharges associated with construction activity as defined in Part 5 of this permit; and
- Storm water discharges to impaired waterbodies that are consistent with approved TMDLs and assigned WLAs, and the additional requirements within this permit.

1.1.3. Allowable Non-Storm Water Discharges

The following are non-storm water discharges allowed under this permit:

- Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- Irrigation drainage;
- Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;
- Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- Routine external building wash down that does not use detergents;
- Uncontaminated ground water or spring water;
- Water used to control dust;
- Discharges from emergency fire-fighting activities;
- Foundation or footing drains where flows are not contaminated with process materials; and
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., “piped” cooling tower blowdown or drains).

1.1.4. Limitations on Coverage

The following discharges are not eligible for coverage under this permit:

- Storm water discharges that are mixed with non-storm water, other than those non-storm water discharges listed in Part 1.1.3.;
- Prohibited discharges as listed in Part 2.1.6.;
- Discharges of construction dewatering effluent to state surface waters requiring authorization under the MPDES “General Permit for Construction Dewatering”;
- Storm water discharges to impaired waterbodies that are inconsistent with approved TMDLs and assigned WLAs, and the additional requirements with this permit;
- Storm water discharges to waterbodies that are inconsistent with additional Department requirements, on a case-by-case basis; or
- Discharges which the Department determines have a reasonable potential to cause, or contribute to, an exceedance of any applicable water quality standard, and/or the Department has determined coverage under a MPDES Individual Permit is required.

Coverage does not relieve the permittee from any other statute, regulation, permits, or other regulatory requirements for activities occurring within the project area.

The Department may deny coverage for storm water discharges citing that the permittee appears unable to comply with the one or more of the following requirements:

- Effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;
- Water quality standards established pursuant to 75-5-301, MCA;

- Prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- Prohibition of any discharges to which the regional administrator has objected in writing;
- Prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act;
- Any additional requirements that the Department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA; and
- A point source is a new source or a new discharge and the discharge from its construction or operation will cause or contribute to a violation of water quality standards (ARM 17.30.1311(7)).

In addition, the Department may deny coverage for the following reasons:

- The storm water discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in this MPDES General Permit (including pollutants from process wastewater streams).
- The MPDES permit authorization for the same operation has previously been denied or revoked.
- The discharge sought to be authorized under the 2017 General Permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA.
- The point source is, or will be, located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

1.2. Authorization under this Permit

An “owner or operator” of a “storm water discharge associated with construction activity” is required to obtain authorization under an MPDES permit. “Owner or operator” means a person who owns, leases, operates, controls, or supervises a point source. All construction activities that disturb and are part of a larger common plan of development or sale are subject to permit coverage.

In this permit, the “owner or operator” is also identified as the “permittee”.

A Notice of Intent (NOI) process is used for an owner or operator to obtain authorization to discharge under this permit. Through the submittal of a NOI, the owner or operator acknowledges eligibility for coverage under this permit and agrees to comply with the effluent limits and conditions of this permit. Authorization is effective upon the date of receipt of the complete NOI Package by the Department. A copy of the completed NOI Package must be maintained for the permittee’s records. The NOI Package, as outlined below, shall be completed and submitted to:

Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901
Helena, MT 59620-0901

1.2.1. New Authorizations (Not Previously Authorized)

Owners or operators can obtain first-time coverage under this permit by submitting a complete Notice of Intent (NOI-SWC) Package to the Department.

The NOI-SWC Package must consist of:

- A completed NOI-SWC form using the standard NOI form provided by the Department;
- A separate SWPPP, including all associated maps, diagrams, details, and plans, which has been completed in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate “application fee” for the NOI-SWC.

1.2.2. Continuing Authorizations Under the 2013 General Permit

Permittees requiring continued authorization beyond the December 31, 2017, expiration date, must submit a complete NOI-SWC package to the Department for coverage under the reissued 2018-2022 General Permit.

The NOI-SWC Package must consist of:

- A completed renewal NOI-SWC form using the standard NOI-SWC form provided by the Department;
- A separate SWPPP, including all associated maps, diagrams, details, and plans, which has been completed in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate “application fee” for the NOI-SWC.

1.2.3. Public Sign or Other Notice Requirement (Effective January 1, 2021)

This requirement is effective January 1, 2021, in order to provide additional time for the regulated community to comply. The permittee must post a sign or other form of notice to publically display confirmation of coverage under this General Permit. The sign or other notice must be positioned in a safe, accessible location in close proximity to the regulated construction activities and visible from the nearest road. At a minimum the sign or other notice must include:

- Large, readable font;
- The MPDES authorization number or a copy of the confirmation letter;
- The statement “Request project information from Montana DEQ Water Protection Bureau at (406) 444-3080”; and
- The statement “File a report at: <http://deq.mt.gov/DEQAdmin/ENF/Spill>”.

1.2.4. Modification to NOI-SWCs

Modification requests to current authorizations (including decreased or increased disturbance area) submitted within six months of the date of the coverage under this Permit are processed with the corresponding fee. If the request is submitted six months after the date of coverage under this Permit, the modification will be processed with the corresponding new “application fee” for the NOI-SWC.

A permittee may not request to add additional construction-related disturbance area(s) unless the new additional construction-related disturbance is directly contiguous to and directly associated with the original site, except for support activities.

The NOI-SWC Package must consist of:

- A completed NOI-SWC form using the standard NOI-SWC form provided by the Department with Modification checked in Section A;
- A separate SWPPP, including all associated maps, diagrams, details, plans, and records, updated in accordance with the requirements identified in Part 3 of this permit;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (see below for applicability); and
- The appropriate “application fee”.

Sage Grouse Consultation Requirements for Modifications to NOIs- If the project is within designated sage grouse habitat, any modification due to a change in disturbed acreage requires verification from the Montana Sage Grouse Habitat Conservation Program that may require a consultation letter and/or updates to a consultation letter. If the modification request is outside of sage grouse habitat, no consultation is required. See NOI-SWC form and attached instructions.

1.2.5. Resubmittal and Administrative Processing

The Department may request a resubmittal of a NOI-SWC, SWPPP, any required records, and any associated fees. Administrative processing fees may be assessed for Department reviews.

1.3. Transfer of Coverage under this Permit

The Department has a Permit Transfer Notification form (PTN-SWC). Permittees must use the PTN-SWC to transfer ownership or change the name of the entity that holds an authorization under this permit with the corresponding fee. The PTN-SWC must be submitted at least 30 days before the effective date of the proposed transfer and constitutes written notice to the Department under the Montana Water Quality Act that the new “owner or operator” assumes responsibility and liability for all the terms and conditions, including permit fees. This PTN-SWC form may not be used to transfer coverage to a new or different construction site, activity or location. Until the Department determines the submitted PTN-SWC form and the transfer to the new “owner or operator” is complete, the “owner or operator” of record remains responsible for compliance with the terms of the authorization under this Permit, including fees and/or violations.

1.4. Termination of Coverage under This Permit

Permittees may terminate coverage under this Permit after achieving of “final stabilization” for a construction site as defined in Part 5. of this Permit. In addition to achieving final stabilization, the permittee must also:

- Remove temporary storm water conveyances/channels and other temporary storm water control measures and/or BMPs
- Remove construction equipment and vehicles, and
- Cease all potential pollutant-generating activities due to the construction activity.

The permittee must submit the standard Department Notice of Termination (NOT-SWC) form to terminate coverage under this Permit. The NOT-SWC form must be signed by an authorized signatory and submitted to the Department.

Coverage under the permit remains in effect until the Department processes a NOT-SWC form. The permittee is responsible for payment of annual fees for each calendar year covered under the permit. Failure to submit a NOT-SWC will result in accrual of annual permit fees. The permittee is responsible for complying with the terms of this permit until notified by the Department that the authorization is terminated.

If an individual MPDES permit is issued to an owner or operator for discharges which would otherwise be subject to this permit, coverage under this Permit is terminated on the effective date of the individual MPDES permit.

1.5. Storm Water Rainfall Erosivity Waiver Form

Owners or operators of construction activities with less than five total acres of ground disturbance may use a "Storm Water Rainfall Erosivity Waiver Form" instead of obtaining coverage under this General Permit.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity. If you submit a waiver request and the associated fee, your project is not waived until approval by the Department and the Department issues an approval letter.

Any discharge of storm water associated with small construction activity not covered by either this General Permit or a waiver may be considered an unpermitted discharge under the Montana Water Quality Act. The Department reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and either General Permit authorization is granted or a complete and accurate waiver certification is submitted and approved. The Department may notify any operator covered by a waiver that they must obtain General Permit coverage. Any member of the public may petition the Department to take action under this provision by submitting written notice along with supporting justification.

2. Effluent Limitations, Monitoring, and Reporting Requirements

2.1. Technology-Based Effluent Limitations

Technology based effluent limits must be achieved through the good engineering selection and design, implementation, installation, and maintenance of Best Management Practices (BMPs) for all authorized storm water discharges associated with construction activities. To meet this requirement, the permittee must comply with all conditions in Part 2.1. of this Permit, and any other state or local requirements, regardless of stringency. All BMPs must be documented in the SWPPP, site map(s), and/or inspection records. If alternative controls are utilized, documentation must be included to confirm impracticability and that the chosen measure achieves comparable criteria.

At a minimum, the permittee must achieve the following in all BMPs:

2.1.1. Erosion and Sediment Controls

- a. Control Storm Water Volume and Velocity to minimize soil erosion, to include:
 - i. Select and design BMPs that address the amount, frequency, intensity, and total duration of precipitation; quantity and quality of storm water runoff including peak flow rates and total storm water volume; soil characteristics for the construction project area(s) including the range of the soil particle sizes expected to be present on the site; and timeframes the construction project will be completed;
 - ii. Implement and install all BMPs in accordance with good engineering practices and design specifications;
 - iii. Complete implementation and installation of BMPs before or at the start of each major construction activity;
 - iv. Minimize erosion within the construction project area;
 - v. Divert storm water runoff from disturbed areas to sediment removal BMPs;
 - vi. Minimize sediment discharges from the construction project area; and
 - vii. Maintain BMPs in effective operating condition.
- b. Control Storm Water Discharges, to include:
 - i. Minimize erosion at outlets and conveyance channels; and therefore, protecting downstream properties and waterways by controlling volume and velocity within the construction project area;
 - ii. Protect all storm drain inlets (to include offsite inlets which receive and carry storm water flow from your site to a state surface water, provided you have the authority to access the storm drain inlet);
 - iii. Manage and minimize vehicle / equipment entrances and exits to the construction project area;
 - iv. Stabilize ditches, swales, channels, and outlets;
 - v. Construct storm water retention and detention facilities during initial site grading activities;
 - vi. Provide surface outlets for retention and detention facilities for active construction, and discharge the highest quality water from the facility; and
 - vii. Protect infiltration facilities from sedimentation during active construction.
- c. Minimize Soil Disturbance, to include:
 - i. Limit areas of disturbance and soil exposure; and
 - ii. Provide a natural buffer within the construction project area.
- d. Minimize the Disturbance of Steep Slopes of 15% or greater, to include:
 - i. Design and construct cut-and-fill slopes to minimize erosion;
 - ii. Divert off site storm water or ground water away from slopes and disturbed areas; and
 - iii. Prevent storm water run on from impacting sediment removal BMPs.
- e. Maintain Natural Buffers around State Surface Waters, to include:
 - i. Maintain natural buffers around state waters; and
 - ii. Direct storm water runoff to vegetated areas.
- f. Minimize Soil Compaction and Preservation of Topsoil, to include:
 - i. Mark and maintain clearing limits before disturbing soils and during construction activities; and
 - ii. Preserve topsoil.

2.1.2. Soil Stabilization

- a. Temporary Soil Stabilization, to include:
 - i. Stabilize disturbed areas immediately for any portion of the construction project that will remain inactive for 14 or more calendar days with erosion control BMPs.
- b. Final Stabilization, to include:
 - ii. Stabilize disturbed areas within any portion of the project that have completed clearing, grading, excavation, or other earth disturbing activities with erosion control BMPs.

2.1.3. Dewatering

- a. Control ground water, surface water, and/or accumulated storm water dewatering activities to prevent discharges to state waters; and
- b. Obtain authorization under the Construction Dewatering General Permit or an individual permit prior to discharge of dewatering effluent to state surface waters.

2.1.4. Pollution Prevention Measures

- a. Implement pollution prevention measures that effectively manage and dispose of all pollutants in a way that does not cause contamination of storm water, to include:
 - i. Provide cover, containment, and protection for all chemicals, liquids, petroleum products, and construction materials, products, and wastes;
 - ii. Use spill prevention and control measures for vehicle maintenance and fueling;
 - iii. Maintain appropriate spill kits; clean up spills and leaks immediately; and report appropriate quantities in accordance with Part 4. of the permit;
 - iv. Prevent discharge of equipment wash water and clean-out wastes, and designate these activities away from and state waters and their conveyances;
 - v. Apply fertilizers and herbicides per manufacturers' requirements; and
 - vi. Prevent discharges of concrete products.

2.1.5. Surface Outlets

When discharging from basins and impoundments, outlet structures must be utilized that withdraw water from the surface, unless infeasible, to discharge the highest quality water from the facility.

2.1.6. Prohibited Discharges

The following discharges are prohibited:

- i. Wastewater from washout of concrete;
- ii. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- iii. Fuels, oils, or other potential pollutants used in vehicle and equipment operation and maintenance;
- iv. Soaps or solvents used in vehicle and equipment washing or external building wash down;
- v. Storm water discharges of disturbed, contaminated soils; and
- vi. Toxic or hazardous substances from a spill or other release including the disturbance and/or removal of contaminated soils.

2.2. Water Quality-Based Effluent Limitations

2.2.1. Water Quality Standards

Storm water discharges regulated under this permit must be controlled as necessary to meet applicable numeric and narrative water quality standards. A storm water discharge associated with construction activity may not cause or contribute to an exceedance of applicable water quality standards.

If at any time the permittee becomes aware, or the Department determines, that a storm water discharge causes or contributes to an exceedance of applicable water quality standards, the permittee must take corrective action as required in Part 2.4 of this permit. Additionally, the Department may require the permittee to obtain coverage under an individual permit, if information indicates the discharges are not controlled as necessary to meet applicable water quality standards.

2.2.2. Storm Water Discharges to Impaired Waterbodies

The permittee must identify if storm water discharges from their construction activity will discharge to impaired waterbodies. Information on impaired waterbodies may be obtained from the Department or from the Montana DEQ Clean Water Act Information Center website. The permittee must consider all impairments and the presence of the corresponding pollutants of concern in their proposed discharges. Storm water-related pollutants contributing to impairments generally include sediment, suspended solids and turbidity, and any secondary sources of pollutants based on construction materials and support activities. Discharges of the pollutants of concern to impaired waterbodies are eligible for coverage under this General Permit if consistent with approved TMDLs and assigned WLAs, and the requirements outlined below.

a. Discharges to an Impaired Waterbodies with No Approved TMDL

For regulated storm water discharges associated with construction activity under this permit, the SWPPP must include a section that describes BMPs that target and reduce any discharges of the identified pollutants of concern to the corresponding impaired waterbodies. Under this subsection of the General Permit, the permittee need only to include the identified pollutants of concern in its SWPPP if the waterbodies are listed as impaired for such pollutants.

b. Discharges to an Impaired Waterbodies with an Approved TMDL

For regulated storm water discharges associated with construction activity, the SWPPP must include a section that describes BMPs that target and reduce any discharges of the identified pollutants of concern to the corresponding impaired waterbodies. Under this subsection of the General Permit, the permittee need only include the identified pollutants of concern in its SWPPP if the waterbodies are listed as impaired for such pollutants. The section submitted by the permittee must ensure that all discharges are consistent with the assumptions of any applicable TMDL wasteload allocation. All EPA approved TMDL wasteload allocations applicable to MPDES-regulated storm water construction activities are incorporated by reference into this permit.

Permittees will be informed if any additional controls are necessary for discharges to protect beneficial uses or to be consistent that the assumptions of any available TMDL wasteload allocation. Such additional controls must be identified within the permittees SWPPP. In certain cases the Department may find coverage under an MPDES individual permit necessary.

2.3. Inspections

2.3.1. Person(s) Responsible for Conducting and Documenting Inspections

Inspections must be performed by a SWPPP Administrator as defined in Part 3.2. of this permit.

2.3.2. Frequency of Inspections

Inspections must be performed in accordance with one of the two schedules listed in Parts 2.3.3. or 2.3.4. unless the construction site or areas of the construction site meet the conditions of the inspection schedule defined in Part 2.3.5. Inspections must be conducted during the construction project's normal business hours. The inspection schedule must be documented in the SWPPP. Any changes to the inspection schedule must be documented in the SWPPP or corresponding inspection report.

2.3.3. Weekly Routine Inspections

A SWPPP Administrator must, at a minimum, conduct a routine inspection at least once every 7 calendar days. Any changes to the inspection schedule, even during periods of noncompliance, must be documented in the SWPPP or corresponding inspection report.

2.3.4. Biweekly Routine and Post-Storm Event Inspections

A SWPPP Administrator must, at a minimum, conduct a routine inspection at least once every 14 calendar days, and a post-storm event inspection within 24-hours of the end of a rainfall event of 0.25 inches or greater, and/or within 24-hours of runoff from snowmelt (ie any measurable snowmelt resulting in a discharge). To determine if a rainfall storm event of 0.25 inches or greater, has occurred on site, either properly maintain a rain gage on site or obtain the storm event information from a weather service representative of your location. For any day of rainfall 0.25 inches or greater, record the method of rainfall determination and the total rainfall measured that day. If an inspection is conducted for a post-storm event, this inspection can be used as a biweekly routine inspection, but the biweekly routine inspections must commence again no later than 14 calendar days after the last post-storm event inspection. Any changes to the inspection schedule, even during periods of noncompliance, must be documented in the SWPPP or corresponding inspection report.

2.3.5. Reductions in Inspection Frequency

The inspection schedules in Parts 2.3.3. and 2.3.4. may be temporarily reduced to a routine inspection once every 30 calendar days if one of the following conditions is met:

- a. All construction activities at the site are temporarily inactive or shutdown and all areas of disturbance have achieved "temporary stabilization" as defined in Part 5 of this permit;
- b. Earthwork and construction activities are completed at the site, and erosion and sediment controls are implemented or installed to establish final stabilization;
- c. Reduction applicable to any portion of the project is temporarily inactive or shutdown and these portions have achieved "temporary stabilization" as defined in Part 5 of this permit; and
- d. Reduction applicable to any portion of the project that is completed and erosion and sediment controls are implemented or installed to establish final stabilization.

Any reduction in the inspection schedule must be documented in the SWPPP or corresponding inspection report. Specific requirements for conditions "c" and "d" above: these portions of the construction project must be identified on the site map(s). Specific requirements for conditions "a" thru "d" above: all BMPs must be in place as identified in the SWPPP and/or inspection report, and site map(s).

2.3.6. Severe Winter Conditions Delay

If an inspection is not possible due to (1) remote site access and (2) severe winter conditions, a delayed inspection may occur. Documentation of the cause of the delayed inspection must be included in the corresponding inspection report and SWPPP, accordingly. A substitute inspection will be performed to compensate for the delayed inspection and follow requirements in accordance with Part 2.3.7. Inspections must resume as soon as the site is accessible. Delays are self-determined on a case-by-case basis with appropriate documentation, and determination is subject to review during a Department compliance evaluation inspection.

2.3.7. Inspection Requirements

Inspections conducted under Parts 2.3.3., 2.3.4., and 2.3.5. of this permit must comply with the inspection requirements in Part 2.3.7.

The following areas must be inspected at a minimum:

- a. All areas disturbed by the construction activity;
- b. All pollutant sources generated by the construction activity;
- c. Material and waste storage areas exposed to rainfall or snowmelt;
- d. Support activities exposed to rainfall or snowmelt;
- e. Entrance and exit locations to the construction activity;
- f. Site perimeter;
- g. All areas where storm water flows onto and within the construction project area; and
- h. Discharge locations and if impaired waterbodies were impacted.

At a minimum, the inspection report must include:

- The MPDES Permit Authorization Number;
- The inspection date and time;
- Name(s) of the SWPPP Administrator(s) completing the inspection;
- Weather conditions at the time of the inspection;
- The type of inspection based on Parts 2.3.3., 2.3.4., 2.3.5., and 2.3.6.;
- Changes in the inspection schedule;
- Major construction activities at the time of the inspection;
- Pollutant sources present at the time of the inspection;
- BMPs implemented or installed at the time of the inspection;
- BMPs Maintenance and Corrective Actions including:
 - BMPs requiring maintenance;
 - Corrective actions per Part 2.4.
- Description of corrective actions taken for the items identified above, including the dates for the corrective action(s) were completed;
- Discharges of sediment or other pollutants;
- Instances of noncompliance; and
- Certification and signature.

Inspection reports must be signed and certified by a SWPPP Administrator based on the requirements in Part 4.15. of this permit. Inspection records must be maintained as required by Part 2.5. of this permit. Maintenance, repair, replacement, or installation of new BMPs determined necessary during site inspections to address ineffective or inadequate BMPs must be conducted in accordance with Part 2.3.8. of this permit.

2.3.8. BMP Maintenance, Replacement, and Failures

All BMPs must be maintained in effective operating condition. If inspections identify BMPs that are not in effective operating condition, maintenance must be documented and performed by the close of the next business day. If this timeframe is infeasible, document rationale and provide a schedule of events with a maintenance timeframe making BMPs operational within seven (7) calendar days.

If new or replacement BMPs are required to be implemented or installed or if additional BMPs are necessary, these additional measures must be implemented or installed by no later than seven (7) calendar days from the time of discovery. If this timeframe is infeasible, document rationale and provide a schedule of events with a timeframe making BMPs operational as soon as feasible after the 7-day timeframe.

All changes in the design, implementation, or installation of erosion and sediment controls or other BMPs must be documented in the inspection report and site map(s). In addition, these changes can be updated to the SWPPP for the permittee to maintain consistency with their internal records.

2.4. Corrective Actions

Corrective actions are actions a SWPPP Administrator takes to:

- Repair, modify, or replace any BMP used at the site;
- Install new or additional BMPs;
- Immediately clean up, dispose of, and, under Part 4, report spills, releases, and other deposits; and
- Remedy a permit violation or noncompliance.

If any of the following conditions occur, a SWPPP Administrator must review and revise the selection, design, installation, implementation, and maintenance of BMPs to ensure the condition is eliminated and will not be repeated in the future:

- An unauthorized release or discharge (e.g., spill, leak, or discharge of non-storm water not authorized by this or another MPDES permit) occurs at the site;
- A SWPPP Administrator or the Department determines that the BMPs are not adequate enough for the discharge as it causes or contributes to an exceedance of applicable water quality standards;
- A SWPPP Administrator or the Department determines that modifications to the BMPs are necessary to meet the requirements in Part 2. of this permit;
- A SWPPP Administrator or the Department determines that the BMPs are not properly selected, designed, installed, operated, and/or maintained; or
- A failure of erosion or sediment controls resulting in sediment, solids, or other wastes being discharged from the site. Upon identification of sediment, solids, or other wastes lost or discharged from the site, the material must be cleaned up and placed back on site, or otherwise disposed of in an acceptable manner.

A SWPPP Administrator must document the completed corrective actions in the corresponding inspection report, and complete any updates to the site map(s). In addition, these changes can be updated in the SWPPP for the permittee to maintain consistency with their internal records.

2.5. Recordkeeping

At the identified site, the primary SWPPP Administrator must retain:

- a copy of this permit;
- a copy of the completed and signed NOI form including modification submittals;
- a copy of the Department's confirmation letter;
- a copy of the signed SWPPP, including revisions and updates, and attachments;
- BMP installation, design, and maintenance specifications/standards for all BMPs installed and detailed in the SWPPP and/or inspection records;
- Site map(s) reflecting up-to-date site conditions
- SWPPP Administrator and Preparer documentation under Part 3.2. of this permit;
- all inspection records required under Part 2.3., 2.4., 3.11., and 3.12. of this permit;
- all reports of noncompliance under Part 4 of this permit; and
- the Sage Grouse consultation letter, as applicable.

These documents are to be made available at the site immediately upon request from a Department representative, EPA official, or local official. These records are to be maintained by the permittee for a period of three years.

2.6. Reporting

2.6.1. Notification of Primary SWPPP Administrator Changes

The permittee must notify the Department in writing of any change of the SWPPP Administrator person/position, mailing address, and/or telephone number within 15 calendar days of change. Notification can be submitted through Attachment A or written authorization.

2.6.2. Noncompliance Reporting

Any instance of noncompliance must be reported to the Department as required by Part 4.23. of the permit.

3. Storm Water Pollution Prevention Plan (SWPPP)

3.1. SWPPP – General Requirements

- 3.1.1. The SWPPP is a document that must be developed and implemented in accordance with good engineering selection and design, hydrologic principles, and pollution control practices to minimize and control potential pollutants in storm water associated with construction activity.
- 3.1.2. The SWPPP must meet the following minimum objectives:
- Provide a site description of the nature of the construction activity that includes identification and details of the major construction activities and project area characteristics;
 - Identify and describe all potential pollutant sources which may affect the quality of storm water discharges associated with the construction activity;
 - Identify and describe the BMPs to be used to reduce potential pollutants in storm water discharges associated with the construction activity and to ensure compliance with the effluent limitations in this permit;
 - Identify and describe the measures which will be used to achieve final stabilization; and
 - Identify and clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control and other BMPs identified in the SWPPP, in good and effective operating condition.
- 3.1.3. At a minimum, the SWPPP must include the information specified in Part 3. and as specified in other parts of this permit.
- 3.1.4. The SWPPP must be implemented as stated in the Primary SWPPP Administrator's up-to-date field copy. SWPPP implementation must initiate at the start of ground disturbance associated with the construction activity, and continue until final stabilization of all construction activity-related ground disturbance is achieved and permit coverage has been terminated. The SWPPP must be maintained to reflect up-to-date site conditions through documented revisions and updates. Inspection reports, logs, and the site map may supplement the SWPPP to reflect the most up-to-date site conditions. Refer to Part 3.12.2. for Revision and Update Options.
- 3.1.5. If a SWPPP was prepared under a previous version of this General Permit, it must be reviewed and updated in accordance with Part 1.2.2.

3.2. SWPPP Preparer and Administrator

Any SWPPP Preparer and Administrator are required to maintain a valid certification meeting the minimum requirements below.

3.2.1. SWPPP Preparer (Effective January 1, 2019)

The permittee must specify a SWPPP Preparer in the NOI form and the SWPPP. A SWPPP Preparer is an individual or position title who is responsible for planning and development of the SWPPP prior to submission of the NOI-SWC. The SWPPP Preparer must develop and document all aspects of the SWPPP, initiating with the start of construction activities, and lasting until final stabilization is achieved and the permit authorization is terminated. The Department has identified the minimum requirements for this role (below), so that the quality of storm water discharges is controlled and the effluent limitations in Part 2. of this permit are achieved.

The SWPPP Preparer minimum requirements and valid certification must be completed before the submittal of the NOI-SWC Package to the Department. Validation of certification will be determined at the time a NOI-SWC package is submitted and/or during a regulatory inspection. Valid certification demonstrating the minimum requirements for the SWPPP Preparer must be maintained with the SWPPP, and must include the following:

- Name(s), title(s), phone number, and emails of SWPPP Preparers; and
- Date and name of provider of course(s).

SWPPP Preparer minimum requirements as stated in Part 3.2.3. are effective January 1, 2019, in order to provide additional time for the regulated community to comply with the minimum requirements. The Department encourages SWPPP Preparers to obtain valid certification as soon as possible during this first year period of the permit in order to better ensure compliance with the other conditions in this permit. This one year extension of SWPPP Preparer minimum requirements does not apply to the compliance expectations for all other requirements in the permit, which remain fully enforceable for the entire effective permit cycle.

3.2.2. SWPPP Administrator

The permittee must specify a SWPPP Administrator and any other designated SWPPP Administrators in the NOI-SWC form and the SWPPP. Additional SWPPP Administrators can be identified in Attachment A. A SWPPP Administrator(s) is an individual or position title who is responsible for developing, implementing, maintaining, revising, and updating the SWPPP. The SWPPP Administrator(s) must address all aspects of the SWPPP, initiating with the start of construction activities, and lasting until final stabilization is achieved and the permit authorization is terminated.

The SWPPP Administrator(s) must have knowledge of the principles and practices of erosion and sediment controls and pollution prevention practices and possess the skills necessary to assess site conditions and determine the effectiveness of selected BMPs. The Department has identified the requirements for this role (below), so that the quality of storm water discharges is controlled and the effluent limitations in Part 2. of this permit are complied with.

The SWPPP Administrator(s) must meet the duly authorized representative requirements as defined in Part 4.18. of this permit to sign inspection reports and other reports.

The SWPPP Administrator(s) person(s)/position(s) provided on the NOI form is used by the Department as a permittee contact.

This SWPPP Administrator(s) minimum requirements and valid certification must be completed before the start of earth-disturbing activities or potential pollutant-generating activities, whichever occurs first. For new employees hired after this time, the minimum requirements and valid certification must be completed before assuming SWPPP Administrator responsibilities. Validation of certification will be determined during an inspection. Valid certification demonstrating the minimum requirements for the SWPPP Administrator(s) must be maintained with the SWPPP, and must include the following:

- Name(s), title(s), phone number, and emails of SWPPP Administrator(s); and
- Date and name of provider of course(s).

3.2.3. SWPPP Preparer and Administrator – Minimum Requirements

The SWPPP Preparer and Administrator(s) must be knowledgeable and skilled within the following concepts to serve their role and maintain a valid certification demonstrating these concepts:

- MPDES permitting requirements to include, but not limited to, applicability, application procedures, SWPPP elements, standard conditions, and termination conditions;
- Local permitting requirements;
- Sage Grouse requirements based on location of the project;
- Knowledge of the principles and practices of erosion and sediment controls and pollution prevention practices, including the minimum criteria for BMPs defined in Part 2.1. of this permit;

- Construction site assessment and planning skills to include knowledge and identification of major construction activities and the phases of construction activities and all support activities, and the potential pollutants generated based on the scope of the project;
- Development, selection, and implementation skills for all storm water controls and BMPs on the site, including final stabilization measures, required by this permit based on appropriate design, installation, function, and location; and how they are to be maintained and/or repaired according to developed and/or manufacturers plans and specifications;
- Development, selection, and implementation skills for pollution prevention controls and BMPs required by this permit;
- Development and implementation skills for procedures and associated documentation for all inspections, maintenance, and required recordkeeping to include when and how to conduct inspections, record applicable findings, take corrective actions, and, when appropriate, report violations and/or noncompliance; and
- Ability to develop and update the site map(s) required by this permit.

3.3. Site Description

The SWPPP must contain a narrative description of the following:

- 3.3.1. The nature of the construction activity and what is being constructed;
- 3.3.2. A description of all support activities and associated storm water discharges dedicated to the construction activity including but not limited to: material borrow areas, material fill areas, concrete or asphalt batch plants, equipment staging areas, access roads/corridors, material storage areas, and material crushing/recycling/processing areas;
- 3.3.3. The total area of the site (in acres), and the area of the site (in acres) expected to undergo construction-related disturbance (including all construction-related support activities);
- 3.3.4. A description of the character and erodibility of soil(s) and other earth material to be disturbed at the site, including cut/fill material to be used;
- 3.3.5. For a storm water discharge associated with construction activity with construction-related disturbance of five acres or more of total land area:
 - an estimate of the runoff coefficient of the site, both before and after construction, including a description of what this is based on; and
 - an estimate of the increase in impervious area after the construction activity is completed;
- 3.3.6. The names of receiving state surface waters and a description of the size (drainage area), type, and location of each point source discharge or outfall with connectivity. Identify if the receiving state surface water is listed as impaired. If there is no distinguishable point source discharge or outfall to the receiving state surface waters, a description of storm water runoff flow and drainage patterns into the receiving state surface waters must be provided. This must specify if discharges are to unnamed drainages and provide the name of the first named drainage that will receive that discharge downgradient of the site. If the discharge is to a municipal separate storm sewer, the location of the MS4 outlet where the storm sewer discharges into receiving state surface waters; and
- 3.3.7. Provide a brief description of the existing natural cover and vegetation at the site and an estimate of the percent density of vegetative ground cover.

3.4. Identification of Potential Pollutant Sources

All potential pollutant sources, including soils, materials, and activities, within the scope of the entire construction project must be evaluated for the potential to contribute pollutants to storm water discharges. The SWPPP must identify those sources determined to have the potential to contribute pollutants to storm water discharges, and these sources must be controlled through BMP selection and implementation, as required in Part 3.5. below.

The permittee must identify all potential pollutant sources within lists provided for soils, materials, and activities within the SWPPP. In addition, the permittee must identify and list the following:

- Other potential pollutant sources from soils, activities, and materials not already identified the SWPPP;
- Other non-storm water discharges if present; and
- Any additional potential pollutant sources.

3.5. Selection of Best Management Practices (BMPs)

The SWPPP must document the selection of BMPs based on the potential pollutant sources identified in Part 3.4. above that have been installed and implemented at the site to achieve the effluent limits in Parts 2.1. and 2.2. of this permit. BMP design, installation, implementation, and maintenance specifications for the BMPs identified in the SWPPP must be maintained on-site. These sources must be kept up to date and accessible upon request. Any departures from the specifications must reflect good engineering practices and must be documented in the SWPPP or corresponding inspection reports.

The permittee must identify all selected BMPs within the SWPPP including:

- Erosion Control BMPs;
- Sediment Control BMPs;
- Run On/Runoff Control BMPs;
- Administrative Controls; and
- Post Construction Controls.

In addition, the permittee must select and list the following:

- Other additional BMPs not already identified in the SWPPP and likely to be used at the construction project;
- Local Sediment and Erosion Controls including a description of requirements;
- BMPs that target and reduce discharges of the identified pollutants of impairment to impaired waterbodies as required under Part 2.2. of this permit; and
- Sage Grouse controls (The consultation letter attached to the SWPPP will meet the requirements for this section in Part 2.5.).

3.6. Dewatering

Discharges of ground water, surface water, and/or accumulated storm water due to dewatering practices which will not discharge to state surface waters must be managed by appropriate BMPs, and these must be identified in the SWPPP. These dewatering practices and BMPs must be identified on the site map required under Part 3.10. of this permit. Discharges of ground water, surface water, and/or accumulated storm water due to dewatering practices which will discharge to state surface waters are not authorized under this permit and must obtain authorization under the MPDES "General Permit for Construction Dewatering"(CDGP), Permit Number MTG070000, as applicable, or an individual permit. The CDGP applies to discharges to include in-stream dewatering, surface area dewatering, and ground water dewatering (See Construction Dewatering definition in Part 5). These dewatering practices and BMPs must be identified in the SWPPP, and identified on the site map required under Part 3.10. of this permit.

3.7. Major Construction Activity and BMP Phasing

The SWPPP must identify the major construction activities, provide a list of all the construction related tasks to complete each major construction activity, and identify an estimated timeframe of initiation and completion of each major construction activity. A distinct major construction activity is defined as any distinct construction related disturbance or distinct pollutant generating activity that occurs within the schedule of activities associated with the construction project. The construction related tasks of each major construction activity are the series of steps necessary to the complete the major construction activity.

The SWPPP must clearly document the selected BMPs throughout the succession of major construction activities until the site reaches final stabilization. The SWPPP may include a table for the permittee to document their project's major construction activities and BMP Phasing. Inspection reports will supplement the SWPPP to reflect the most up-to-date site conditions.

3.8. Final Stabilization

The SWPPP must clearly describe all procedures and BMPs used to ensure that "final stabilization," as defined in Part 5. of this permit and ARM 17.30.1102(5), is achieved.

For all areas with construction-related ground disturbance, final stabilization must be achieved uniformly over the entire disturbed area, without relatively bare areas based on the pre-disturbance conditions. If using seed or planted vegetation to achieve final stabilization, the plants must be perennial. Before submitting the NOT form to terminate coverage under this permit and in addition to achieving final stabilization, the following must have also occurred:

- removal of temporary storm water conveyances/channels and other temporary storm water control measures and/or BMPs
- removal of construction equipment and vehicles, and
- cessation of any potential pollutant-generating activities due to the construction activity.

3.9. Post-Construction Storm Water Management

The SWPPP must clearly describe any BMPs which are to be used to control storm water and potential pollutants in storm water discharges that will occur after construction operations have been completed at the site, including any applicable local requirements. If a temporary BMP transitions into a post-construction BMP, the SWPPP must clearly describe this transition and any associated maintenance. In addition, for post-construction storm water management at constructed/developed sites, the Department supports the use of "Low Impact Development" (LID) and "Green Infrastructure" BMPs, where such practices are practicable, that infiltrate, evapotranspire, or capture for reuse the storm water runoff generated from the majority of expected storm events.

3.10. Site Map

The SWPPP must include one or a series of legible site maps/plans of sufficient scale and size which clearly display site conditions. Multiple site maps/plans are encouraged for clarity as necessary.

At a minimum, the SWPPP site maps/plans must include the following:

- 3.10.1. Site boundaries to include the perimeter of common plans of development;
- 3.10.2. Locations and types of all dedicated construction activity support areas (including off-site) such as access-related work, earth material borrow areas, equipment staging areas, materials storage areas, temporary concrete or asphalt batch plants, and any areas used for fill placement;
- 3.10.3. Locations where ground-disturbing activities will occur, noting any BMP phasing of major construction activities;
- 3.10.4. Preconstruction topography of the site including showing state surface waters which will receive storm water runoff from the site. Identify if the receiving state surface water is listed as impaired;
- 3.10.5. Drainage pattern(s) and flow directions (use arrows) of storm water and authorized non-storm water flow onto, over, and from the site property before and after major grading activities, including lines showing boundaries between different drainage areas;
- 3.10.6. Storm water, and allowable non-storm water discharge locations and types, including the locations of any storm drain inlets and where storm water or allowable non-storm water will be discharged to state surface waters;

- 3.10.7. Municipal separate storm sewer systems to include the identification of applicable outlets, where the construction activity's storm water discharges are into them;
- 3.10.8. Locations and sources of run-on to the site from adjacent property that may contain potential pollutants (including sediment);
- 3.10.9. Locations of areas of cut and fill;
- 3.10.10. Locations of areas which are to remain undisturbed including vegetative buffer areas;
- 3.10.11. Locations of existing natural cover and vegetation or other pre-existing ground stabilization measures before construction (such as forest, pasture, lawn, pavement, structures);
- 3.10.12. Approximate slopes before and after major grading activities. Note areas of steep slopes both before and after grading;
- 3.10.13. Locations where sediment, soil, or other construction and building materials will be stockpiled;
- 3.10.14. Locations of fueling, vehicle and equipment maintenance, and/or vehicle cleaning and washing areas;
- 3.10.15. Locations of concrete washout and other waste management areas;
- 3.10.16. Locations of ground water or other construction dewatering activities and discharges (see Part 3.7.9. of this permit);
- 3.10.17. Designated points on the site where vehicles will exit onto paved roads;
- 3.10.18. Locations of other potential pollutant-generating activities not specified elsewhere;
- 3.10.19. Locations of all structural and non-structural BMPs for potential pollutants other than sediment;
- 3.10.20. Locations and specific types of all temporary or permanent erosion and sediment control BMPs;
- 3.10.21. Locations and specific types of all storm water control BMPs, including impoundments or conveyances such as retention and detention ponds, ditches, pipes, and swales;
- 3.10.22. Locations of structures and other impervious surfaces upon completion of construction;
- 3.10.23. Public Sign (Effective January 1, 2021);
- 3.10.24. Map scale;
- 3.10.25. North arrow; and
- 3.10.26. Map legend.

3.11. Inspection and BMP Maintenance Procedures

The permittee must identify the selected inspection schedule (Part 2.3.2.) within the SWPPP. The SWPPP must identify and clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment controls and other BMPs identified in the SWPPP, in good and effective operating condition. These documented procedures must comply with the inspection requirements in Part 2.3. of this permit and correspond with BMP maintenance specifications (also refer to Parts 2.3.8., 2.4., 3.5., and 3.9. of the permit for related BMP maintenance requirements).

3.12. SWPPP Revisions and Updates

The permittee must maintain the SWPPP and site map. Also, see Parts 2.3. and 2.4. of this permit.

3.12.1. Conditions that trigger revisions and updates are outlined below:

- a. When there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new, additional, or revised BMPs; or
- b. If the SWPPP proves to be ineffective in achieving the general objectives of controlling potential pollutants in storm water discharges associated with construction activity; or
- c. The Department determines that the BMPs are not properly selected, designed, installed, operated, and/or maintained; or
- d. When BMPs are no longer necessary and are removed.

3.12.2. Revision and Update Options

The permittee must select one of three options below to document how revisions and updates to the SWPPP will be maintained to reflect the most up-to date site conditions. Inspection reports may be used to supplement the SWPPP to reflect revisions and updates. Subsequently, the site map must reflect any revisions or updates to the SWPPP or from corresponding inspection reports. Revisions and updates must be made before changes in the site conditions except for BMP changes addressing installation/implementation and these specific revisions and updates will be made as soon as practicable, but in no case more than 72 hours after the changes occur at the site.

- a. Revisions and updates directly to the SWPPP and corresponding sections (i.e. additional SWPPP pages attached to include the time, date, and SWPPP Administrator authorizing the change), and the site map; or
- b. Revisions and updates reflected through inspection records, and the site map; or
- c. Revisions and updates reflected through a log, and the site map. Log entries must include the time and date of the change(s) in the field; an identification of the BMP(s) removed or added; the location(s) of those BMP(s); and the name of the SWPPP Administrator authorizing the change.

4. Standard Conditions

4.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for termination under the General Permit; for revocation and reissuance of a confirmation letter; for a modification requirement; or for denial of coverage under the General Permit (new or renewed). The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

4.2. Penalties for Violations of Permit Conditions

The Montana Water Quality Act at MCA 75-5-631 provides that in an action initiated by the Department to collect civil penalties against a person who is found to have violated a permit condition of this Act is subject to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

The Montana Water Quality Act at MCA 75-5-632 provides that any person who willingly or negligently violates a prohibition or permit condition of the Act is guilty of an offense, and upon conviction, is subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than one year, or both, for the first conviction. Following an initial conviction, any subsequent convictions subject a person to a fine of up to \$50,000 per day of violation or by imprisonment for not more than two years, or both.

The Montana Water Quality Act at MCA 75-5-611 provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in permit conditions "Bypass of Treatment Facilities" and "Upset Conditions", nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

4.3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The reapplication must be submitted at least 30 days before the expiration date of this permit.

4.4. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4.5. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4.6. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4.7. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4.8. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

4.9. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

4.10. Inspection and Entry

The permittee shall allow the head of the Department, or an authorized representative upon the presentation of credentials and other documents as may be required by law, to:

- Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and as otherwise authorized by the Montana Water Quality Act, any substances or parameters at any location; and
- Sample, or monitor at reasonable times for the purpose of assuring permit compliance, any substances or parameters at any location.

4.11. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Clean Water Act, applications, permits and effluent data shall not be considered confidential.

4.12. Reporting Requirements- Monitoring and Monitoring Reports

The Department may require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. If monitoring is required, the Department will specify monitoring requirements to include, and not limited to, storm water sampling, analytical testing, and an evaluation of monitoring results, recording, and reporting. Monitoring results must be reported on a discharge monitoring report (DMR) or as required by the Department. Monitoring results must be reported at the intervals specified.

If the permittee monitors any pollutant more frequently than required, using approved test procedures, the results of this monitoring must be included in the calculation and reporting of data submitted in the DMR. Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the Department.

4.13. Monitoring and Records- Representative Sampling

Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

4.14. Monitoring and Records- Retention of Records

The permittee shall retain records of all monitoring information including all calibrations and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Department at any time.

4.15. Monitoring and Records- Records Content

Records of monitoring information must include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

4.16. Monitoring and Records- Test Procedures

Monitoring must be conducted according to test procedures approved under Title 40 of the Code of Federal regulations (40 CFR) Part 136, unless other test procedures have been specified in this permit, confirmation letter, or by the Department.

4.17. Monitoring and Records-Penalties for Falsification of Reports and Tampering

The Montana Water Quality Act at MCA 75-5-633 provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method, or makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

4.18. Signatory Requirements

Authorized representatives: All applications, reports or information submitted to the Department or the EPA shall be signed and certified in accordance with ARM 17.30.1323.

All permit notices of intent shall be signed as follows:

- For a corporation: by a principal executive officer or ranking elected official;
- For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
- For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:

- The authorization is made in writing by a person described above and submitted to the Department; and
- The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position.

Changes to authorization: If an authorization described above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Certification: Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

4.19. Reporting Requirements - Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility, activity, or operation.

Notice is required only when:

- The alteration or addition to the permitted facility, activity, or operation may meet one of the criteria for determining whether a facility is a new source; or
- The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

4.20. Reporting Requirements- Anticipated Noncompliance

The permittee shall give advance notice to the Department of any planned changes in the permitted facility/activity/operation which may result in noncompliance with permit requirements. The permittee shall notify as soon as possible by phone and provide with the following information, in writing, within five (5) days of becoming aware of such condition:

- A description of the discharge and cause of noncompliance; and
- The period of noncompliance including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

4.21. Reporting Requirements- Transfers

Permit coverage is not transferable to any person except after notice is given to the Department and a transfer fee is paid. The Permit Transfer Notification (PTN-SWC) form provided by the Department must be completed and must be received by the Department at least 30 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following the signatory requirements of Part 4.18 of the General Permit.

4.22. Reporting Requirements- Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim, and final requirements contained in any compliance schedule of this permit or required by the Department shall be submitted no later than 14 days following each schedule date.

4.23. Reporting Requirements- Twenty-four Hour Reporting

The permittee shall report any serious incident of noncompliance affecting the environment. Any information must be provided orally within 24 hours from the time the permittee first becomes aware of the following circumstances:

- Any noncompliance which may seriously endanger health or the environment;
- Any unanticipated bypass which exceeds any effluent limitation in the permit;
- Any upset which exceeds any effluent limitation in the permit; or
- As applicable, violation of a maximum daily discharge limit of any pollutant listed by the Department in the General Permit or confirmation letter.

A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

- A description of the noncompliance and its cause;
- The period of noncompliance, including exact dates and times;
- The estimated time noncompliance is expected to continue if it has not been corrected; and
- Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Oral Notification: The report shall be made orally to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 324-4777.

Waiver of written notification requirement: The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-3080. Written reports shall be submitted to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901

4.24. Reporting Requirements- Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours shall be reported as soon as possible. The reports shall contain the information listed above for written submissions under Part 4.23.

4.25. Reporting Requirements- Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application package, or submitted incorrect information in a permit application package or any report to the Department, it shall promptly submit such facts or information.

4.26. Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless

- the bypass does not cause effluent to exceed effluent limitations and is necessary for essential maintenance to ensure efficient operation; or
- the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
- there are no feasible alternatives;
- and the proper notification is submitted.

Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass. If the permittee knows in advance of the need for anticipated bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects. The permittee shall submit notice of an unanticipated bypass as required under Part 4.23.

4.27. Upset Conditions

An upset may be used as an affirmative defense in actions brought to the permittee for noncompliance with a technology-based effluent limitation. The permittee (who has the burden of proof) must have operational logs or other evidence showing:

- when the upset occurred and its causes;
- that the facility was being operated properly;
- proper notification was made; and
- remedial measures were taken as required by the duty to mitigate standard condition.

4.28. Fees

The permittee is required to submit payment of an annual fee as set forth in ARM 17.30.201. If the permittee fails to pay the annual fee within 90 days after the due date for the payment, the Department may:

- Impose an additional assessment computed at the rate established under ARM 17.30.201: and,
- Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. The Department may lift suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

4.29. Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.

4.30. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

4.31. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

4.32. Reopener Provisions

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

- **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different permit conditions than contained in this permit.
- **Water Quality Standards are Exceeded:** If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the Department may modify the permit conditions or water management plan.
- **TMDL or Wasteload Allocation:** TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.
- **Water Quality Management Plan:** A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

4.33. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established for toxic pollutants which are present in the discharge, within any specified timeframe within rule or thereof, and even if the General Permit or confirmation letter has not yet been modified to incorporate such standard or prohibition for the toxic pollutant.

5. General Definitions and Abbreviations

The following definitions and abbreviations apply to terms used in this permit.

"Act" means the Montana Water Quality Act, Title 75, chapter 5, MCA.

"Best Management Practices" ("BMPs") means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Montana Board of Environmental Review established by 2-15-3502, MCA.

"CFR" means the Code of Federal Regulations.

"Clean Water Act" means the federal legislation at 33 USC 1251, et seq.

"Construction Dewatering" means the action of pumping or actively removing ground water, surface water, and/or accumulated storm water from a construction site or other related activities. MPDES "General Permit for Construction Dewatering" applies to the discharge of construction dewatering effluent to state surface water, with increased sediment and turbidity as the primary pollutants of concern, to include:

- *In-stream dewatering*: cofferdams, drill hole or pylon development;
- *Surface area dewatering*: water pumped from disturbed surface areas (foundations, trenches, excavation pits, vaults, sumps, or other similar points of accumulation associated with a construction site or related activities where sediment-laden ground water, surface water, and/or storm water inflow must be removed); and
- *Ground water dewatering*: water discharged from well development, well pump tests, or pumping of ground water from a construction site or other related activities.

"Department" means the Montana Department of Environmental Quality. Established by 2-15- 3501, MCA.

"Disturbance" related to construction activity means areas that are subject to clearing, excavating, grading, stockpiling earth materials, and placement/removal of earth material performed during construction projects.

"Ephemeral stream" means a stream or part of a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.

"EPA" or "USEPA" means the United States Environmental Protection Agency.

"Facility or activity" means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

"Final stabilization" means the time at which all soil-disturbing activities at the site have been completed, and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.

"General Permit" means an MPDES permit issued under ARM 17.30.1341 authorizing a category of discharges under the Act within a geographical area.

"Larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. These separate and distinct construction activities which form a larger common plan of development or sale may have areas of disturbance which are not physically connected.

"Montana pollutant discharge elimination system (MPDES)" means the system developed by the Board and Department for issuing permits for the discharge of pollutants from point sources into state surface waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

"Owner or operator" is defined at 75-5-103, MCA.

"Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms "sewage," "industrial waste," and "other wastes" as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

"Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Receiving state surface waters" is the river, stream, lake, etc., which receives the discharge from the site.

"Regional Administrator" is the administrator of the EPA Region with jurisdiction over federal water pollution control activities in the State of Montana.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"State waters" is defined at 75-5-103, MCA.

"Storm water" means storm water runoff from precipitation, snowmelt runoff, and surface runoff and drainage.

"Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre

of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

- Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to ARM 17.30.1105(1)(f).
- For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in ARM 17.30.1102(29)(a), (b), (d) and (e).

"Storm Water Pollution Prevention Plan (SWPPP)" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The Department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.

"Surface waters" means any waters on the earth's surface, including but not limited to streams, lakes, ponds, and reservoirs; and irrigation and drainage systems. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

"Temporary Stabilization" means a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

"Total maximum daily load" or "TMDL" is defined at 75-5-103, MCA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.



February 3, 2022

Scott Smithline
Federal Highway Administration
610 East Fifth Street
Vancouver, WA 98661

RE: Authorization No. **MTB004422** Short Term Water Quality Standard for Turbidity Related to Construction Activity Pursuant to 75-5-318, MCA
VALID February 3, 2022 through February 3, 2023

Dear Mr. Smithline:

The Montana Department of Environmental Quality Water Protection Bureau has completed our review of your application to conduct maintenance repairs/improvements at multiple waterbody crossings along existing roadways within the Charles M. Russell Wildlife Refuge in Fergus, Petroleum, and Phillips Counties, Montana. This activity herewith is qualified for a temporary surface water quality turbidity standard if it is carried out in accordance with the following conditions:

- (1) Construction activities in or near the watercourse are to be limited to the minimum area necessary, and conducted so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation,
- (2) The use of machinery in the watercourse shall be avoided unless absolutely necessary. To prevent leaks of petroleum products into waterways, no defective equipment shall be operated in the watercourse or adjacent areas capable of contributing surface flow to the watercourse,
- (3) Precautions shall be taken to prevent spillage of any petroleum products, chemicals or other deleterious material in or near the watercourse, and no equipment shall be fueled or serviced in adjacent areas capable of contributing surface flow to the watercourse,
- (4) All disturbed areas on the streambank and adjacent areas created by the construction activity shall be protected with temporary erosion control during construction activities. These areas shall be reclaimed with appropriate erosion control measures and revegetated to provide long-term erosion control,
- (5) Any excess material generated from this project must be disposed of above the ordinary high-water mark, not classified as a wetland, and in a position not to cause pollution to State waters,
- (6) Clearing of vegetation will be limited to that which is absolutely necessary for construction of the project,

- (7) The use of asphalt or petroleum-based products as riprap is strictly prohibited. Its use as fill material is also prohibited if it is placed in a location where it is likely to cause pollution of State waters,
- (8) This authorization does not authorize a point source surface water discharge. A MPDES permit is required for said discharge, and
- (9) The applicant must conduct all activities in full and complete compliance with all terms and conditions of any permit for this activity issued pursuant to the Montana Natural Streambed and Land Preservation Act (310 permit) or the Montana Stream Protection Act (124 permit), and any valid Memorandum of Agreement and Authorization (MAA) negotiated for this activity.

This authorization is valid for the period noted. No authorization is valid for more than a one-year period of time.

Any violations of the conditions of this authorization may be subject to an enforcement action pursuant to the applicable provisions of the Montana Water Quality Act.

This authorization is granted pursuant to 75-5-318, MCA, and only applies to the activity described by your application. Any modification of the activity described in your application which may result in additional turbidity in the stream must receive prior approval from the Department. You may contact me at (406) 444-5546.

Sincerely,



Jon Kenning, Chief
Water Protection Bureau
Water Quality Division

cc: Phillips Conservation District
Fergus Conservation District
Petroleum County Conservation District

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(Reserved)

(Reserved)

Project: MT FWS CMR 61520(1), Charles M Russell Refuge Repairs

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FIRE PROTECTION AND SUPPRESSION PLAN

INDEX

Fire Protection and Suppression Plan

PlanJ-3

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FIRE PROTECTION AND SUPPRESSION

This plan outlines the channels of responsibility for fire prevention and suppression activities and sets up an attack procedure in the event of fire within the project area. The Project Area is defined as the area that is I and adjacent to the project rights-of-way and work areas, and all roads used in connection with the work.

1. Responsibilities

A. Contractor Fire Suppression

1. It is understood and agreed that the Contractor will do all in his/her power to prevent and suppress fire on or adjacent to the Project Area, as stipulated in the contract.
2. Responsible for and will direct all fire activities on the project until relieved by a Fire Officer or other designated fire official, and will insure that prevention and suppression actions are in accordance with contract requirements, including this fire plan. Contractor shall delegate the next highest in authority on the job to be responsible for the above activities when he/she is not at the project site.
3. In line with this agreement, individuals will be supplied from the contractor's crews to fight fires on the project area up to the total number of individuals employed by the Contractor as they are needed by the Fire Official.
4. The contractor insures that this Fire Plan will be complied with for the duration of the contract.

B. Fire Officer Service District Ranger

Responsible for all fire activities on the Ranger District on which the contract project is located. District Ranger's representative will discuss the fire plan with the Contractor including needed equipment and action to be taken when a fire occurs. Will notify the Contractor through the Contracting Officer's Representative (PROJECT ENGINEER) to take correction measures when fire requirement are in compliance.

2. Fire Plan

Before starting any operations on the project, the Contractor, Permittee, Licensee, or Purchaser, hereinafter referred to as the "Contractor," shall prepare a fire plan in cooperation with the Contracting Officer providing for the prevention and control of fires in the project area.

The Contractor shall certify compliance with fire protection and suppression requirements before beginning operations during the fire period and closed season, and shall update such certification when operations change.

3. Substitute Measures

The Contracting Officer may by written notice authorize substitute measures or equipment or may waive specific requirements during periods of low fire danger.

4. Emergency Measures

The Fire official, may require emergency measures, including the necessary shutting down of equipment or portions of operations in the project area during periods of fire emergency created by hazardous climatic conditions.

5. Fire Control

The Contractor shall, independently and in cooperation with the fire official, take all reasonable action to prevent and suppress fires in the project area. Independent initial action shall be prompt and shall include the use of all personnel and equipment available in the project area.

For the purpose of fighting fires on or in the vicinity of the project which are not caused by the Contractor's operations, the Contractor shall place employees and equipment temporarily at the disposal of the Fire official,. Any individual hired by the FHWA will be employed in accordance with the Interagency Pay Plan for Emergency Firefighters. FHWA will compensate the Contractor for equipment rented at firefighting equipment rates common in the area, or at prior agreed to rates.

6. Compliance with State Fire Laws

Listing of specific fire precautionary measures herein is not intended to relieve the Contractor in any way from compliance with the State Fire Laws covering fire prevention and suppression equipment, applicable to operations under this contract, permit or license.

7. Fire Precautions

Specific fire precautionary measures are as follows:

a. Smoking and Open Fires

Smoking and fires shall be permitted only at the option of the Contractor. The Contractor shall not allow open fires on the project area without advance permission in writing from Fire official.

Unless restricted by State Law or Federal Regulation, smoking shall be permitted only in such portions of the project area that are free of flammable material. Smokers shall sit down to smoke in such a position that any burning material will fall within a cleared area, and shall extinguish and press out in mineral soil all burning material before leaving the cleared area.

b. Fire Extinguishers and Equipment on Trucks, Tractors, etc.

All power-driven equipment operated by the Contractor on National land, except portable fire pumps, shall be equipped with one fire extinguisher having a UL rating of at least 5 BC, and one "D" handled or long handled round point shovel, size "0" or larger. In addition, each motor patrol, truck and passenger-carrying vehicle shall be equipped with a double-bit axe or Pulaski, 3-1/2 pounds or larger.

Equipment shall be kept in a serviceable condition and shall be readily available.

c. Power Saws

Each gasoline power saw operator shall be equipped with a pressurized chemical fire extinguisher of not less than 8-ounce capacity by weight, and one long-handled round point shovel, size "0" or larger. The extinguisher shall be kept in possession of the saw operator at all times. The shovel shall be accessible to the operator within 1 minute.

d. Extinguishers

One refill for each type or one extra extinguisher sufficient to replace each size extinguisher required on equipment shall be safely stored in the fire tool box or other agreed upon place on the project area that is protected and readily available.

e. Spark Arresters and Mufflers

Each internal combustion engine shall be equipped with a spark arrester meeting either (1) appropriate Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a) as now or hereafter amended unless it is:

(1) Equipped with a turbine-driven exhaust supercharger such as the turbocharger. There shall be no exhaust bypass.

(2) A passenger-carrying vehicle or light truck, or medium truck up to 40,000 GVW, used on roads and equipped with a factory-designed

muffler complete with baffles and an exhaust system in good working condition.

(3) A heavy duty truck, such as a dump or log truck, or other vehicle used for commercial hauling, used only on roads and equipped with a factory designed muffler and with a vertical stack exhaust system extending above the cab.

Exhaust equipment described in this subsection, including spark arresters and mufflers, shall be properly installed and constantly maintained in serviceable condition.

f. Emergency Fire Precautions

The Contractor shall restrict operations in accordance with the Industrial Fire Precaution Levels listed below. The Fire official, may change the Industrial Fire Precaution Levels to other values upon revision of the National Fire Danger Rating System and may change the specific Industrial Fire Precaution Levels when such changes are necessary for the protection of the National Lands. When sent to the Contractor, the revised Industrial Fire Precaution Levels will supersede the attached levels.

INDUSTRIAL FIRE PRECAUTIONS SCHEDULE

LEVEL INDUSTRIAL FIRE PRECAUTION (IFPL)

I. Closed season - Fire precaution requirements are in effect. A fire watch/security is required at this and all higher levels unless otherwise waived.

II. Partial hootowl - The following may operate only between the hours of 8 p.m. and 1 p.m., local time:

- a. power saws, except at loading sites;
- b. cable yarding;
- c. blasting;
- d. welding or cutting of metal.

III. Partial shutdown - The following shall be prohibited except as indicated:

Cable yarding - except that gravity operated logging systems employing non-motorized carriages may be operated between the hours of 8 p.m. and 1 p.m., local time, when all block and moving lines, except the line between the carriage and the chokers, are suspended 10 feet above the ground;

Power saws - except power saws may be used at loading sites and on tractor/skidder operations between the hours of 8 p.m. and 1 p.m., local time.

In addition, the following are permitted between the hours of 8 p.m. and 1 p.m., local time:

- a. tractor/skidder operations;
- b. mechanized loading and hauling of any product or material;
- c. blasting;
- d. welding or cutting of metal;
- e. any other spark-emitting operation not specifically mentioned.

IV. General shutdown - All operations are prohibited.

The following definitions shall apply to these Industrial Fire Precaution Levels:

Cable yarding systems: A yarding system employing cables and winches in a fixed position.

Closed season (Fire Precautionary Period): That season of the year when a fire hazard exists as declared by the responsible agency official.

Contracting Officer: The person executing the contract, permit or license on behalf of the Government and includes that person's designated representative, acting within the limits of their authority or the duly appointed successor to the individuals.

Loading sites/woods site/project area: A place where any product or material (including but not limited to logs, firewood, slash, soil, rock, poles, posts, etc.) is placed in or upon a truck or other vehicle.

Low hazard area: Means any area where the responsible agency representative (WDNR, ORF, BIA, BLM) determines the combination of elements reduces the probability of fire starting and/or spreading.

Tractor/skidder operations: include a harvesting operation, or portion of a harvesting operation, where tractors, skidders, or other harvesting equipment capable of constructing fireline, are actively yarding products and can quickly reach and effectively attack a fire start.

Waivers, written in advance, may be used for any and all activities. Activities for which waivers may be issued include, but are not limited to:

- a. mechanized loading and hauling;
- b. road maintenance such as sprinkling, graveling, grading and paving;

- c. cable yarding using gravity systems or suspended lines and blocks, or other yarding systems where extra prevention measures will significantly reduce the risk of fire;
- d. powers saws at loading sites or in felling and bucking where extra prevention measures will significantly reduce the risk of fire;
- e. maintenance of equipment (other than metal cutting and welding) or improvements such as structures, fences and powerlines.

Such waiver, or substitute precautions will prescribe measures to be taken by the Contractor to reduce the risk of ignition, and/or the spread of fire. The Contracting Officer shall consider site specific weather factors, fuel conditions, and specific operations that result in less risk of fire ignition and/or spread than contemplated when precaution level was predicted. Consideration shall also be given to measures that reduce the precaution levels above. The Contractor shall assure that all conditions of such waivers or substitute precautions are met.

The Contractor shall obtain the predicted Industrial Fire Precaution Level daily, prior to the start of work, from the appropriate Ranger District headquarters. If predictions made after 6:00 p.m., local time, are significantly different than the original prediction, the FHWA will inform the Contractor when changes in restrictions or industrial precautions are made.

NOTE: The IFPL system does not apply on lands protected by ODF east of the summit of the Cascades.

Where hauling involves transit through more than one shutdown/regulated use area, the precaution level at the woods loading site shall govern the level of haul restriction, unless otherwise prohibited by other than industrial precaution level system.

8. Fire Tools

The Contractor shall furnish serviceable fire fighting tools in a readily accessible fire tool box or compartment of sound construction with a hinged lid and hasp so arranged that the box can be secured or sealed. The box shall be red and marked "Fire Tools" in letters one inch high. It shall contain a minimum of:

- a. 2 axes or Pulaskis with a 32-inch handle;
- b. 3 adze eye hoes. One Pulaski may be substituted for 1 adze eye hoe;
- c. 3 long-handled, round point shovels, size "0" or larger.

9. Fire Security

When the Industrial Fire Precautions Level is "I" or higher, unless a waiver is granted, the Contractor shall designate a person who shall perform fire security services listed below on the project area and vicinity. The designated person shall be capable of operating the Contractor's communications and fire fighting equipment specified in the contract, excluding helicopters, and of directing the activities of the Contractor's personnel on fires. In lieu of having the designated person perform the required supervisory duties, the Contractor may provide another person meeting the qualifications stated above to direct the activities of Contractor's personnel and equipment during all fire fighting activities.

Services described shall be for at least 1 hour from the time the Contractor's operations are shut down. For the purposes of this provision, personnel servicing equipment, and their vehicles, who are not engaged in cutting or welding metal are excluded.

Fire security services shall consist of moving throughout the operation area or areas constantly looking, reporting, and taking suppression action on any fires detected. Where possible, the designated person shall observe inaccessible portions of helicopter operating areas from vantage points within or adjacent to project area.

10. Blasting

Whenever the Industrial Fire Precaution Level is "II" or greater, a fire security person equipped with a long-handled, round point, No. "0" or larger, shovel, and a five-gallon backpack pump can filled with water will stay at location of blast for 1 hour after blasting is done. Blasting may be suspended by FHWA in writing, in an area of high rate of spread and resistance to control.

Fuses shall not be used for blasting. Explosive cords shall not be used without written permission of FHWA, which may specify conditions under which such explosives may be used and precautions to be taken.

FIRE PROTECTION AND SUPPRESSION

Additional Fire Precautionary Measure 1 - Tank Truck

11. The Contractor shall provide a tank truck or trailer, containing not less than 300 gallons of water, during yarding, loading, land clearing, right-of-way clearing and mechanical treatment of slash. A tank truck or trailer will not be required if powersaw falling and bucking is the only operation. Such tank truck or trailer shall be maintained in a serviceable condition and located within 10 minutes, round trip, from each project area during fire period and closed season.

The tank truck or trailer shall be equipped with a pump capable of discharging 20 gallons of water per minute, using a 1/4-inch nozzle tip, through a 50-foot length of rubber lined hose. In addition, 500 feet of serviceable fabric jacket rubber lined hose of not less than 1 inch outside diameter, fitted with a nozzle capable of discharging a straight stream of 1/4 inch diameter and a spray pattern shall be immediately available for use. The tank, pump and at least 250 feet of hose and nozzle shall be connected and ready for use at all times.

If a trailer is used, it shall be equipped with a hitch to facilitate prompt movement. A serviceable tow vehicle shall be immediately available for attachment to the trailer and must meet the time requirements stated above. Such truck or trailer shall be equipped to operate for a minimum of 8 hours. Tank truck or trailer shall be available from the start of work to the end of the Fire/Watch Security service.

Additional Fire Precautionary Measure 2 - Communication

12. The Contractor shall provide adequate two-way communication facilities to report a fire to CO within 15 minutes detection. FCC Regulations prohibit commercial use of Citizen Band (CB) radios. (CB's are not considered adequate two-way communications).

Such communications shall be operable during periods of operation of power-driven equipment, including the time fire security is required.