

# INVITATION FOR BIDS

**Solicitation No. 69056723B00005**

**This solicitation is a  
Total Small Business Set-aside**  
See FAR clause 52.219-6

**Project Number: WA FLAP JEFFER 150009(1)**  
**Project Name: Undi Road Bypass Improvements**

**Bid Opening Date:**  
See Page A-3,  
Block 13A

## QUICK INDEX

Page	Item
---	Bid Submittal Checklist
---	Authority to Sign
---	Bid Bond
---	Table of Contents
A-1	Notice to Bidders
A-3	SF 1442, Solicitation, Offer and Award
A-7	Bid Schedule
B-1	Solicitation Provisions
C-1	Contract Clauses
D-1	General Wage Decision
E-1	Special Contract Requirements
H-1	Permits
I-1	Fire Protection & Suppression

**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](mailto:wfl.contracts@dot.gov)**

<b>PROJECT No.</b>	<b>WA FLAP JEFFER 150009(1)</b>
<b>PROJECT NAME</b>	<b>Undi Road Bypass Improvements</b>
<b>BEGINNING AT</b>	<b>See plans</b>
<b>ENDING AT</b>	<b>See plans</b>
<b>LENGTH</b>	<b>2.18 miles</b>
<b>COUNTY</b>	<b>Jefferson and Clallam</b>
<b>STATE</b>	<b>Washington</b>
<b>FIXED COMPLETION DATE</b>	<b>See FAR Clause 52.211-10</b> (FAR Clauses begin on page C-1)

## Bid Submittal Checklist

Before submitting your bid, please review the following:	Done?	Is this in the envelope?
<b>Bid Envelope</b>		
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?		
<b>Pages A-3 &amp; A-4 (SF 1442, Solicitation Offer &amp; Award)</b>		
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?		
<b>Bid Schedule (see page A-7)</b>		
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.)		
<b>Bid Bond (Standard Form 24)</b>		
<b><u>Bids received without a valid bid bond will be rejected.</u></b>		
Did I complete my bid bond correctly?		
Did I include the original?		
Did I attach the Power of Attorney to the bid bond?		
<b>Authority to Sign</b>		
Did I include a completed form for <u>each</u> person signing the SF1442 and Bid Bond?		
<b>Representations &amp; Certifications &amp; FAR Clause</b>		
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-105)?		
<b>System for Award Management (SAM) <a href="http://SAM.gov">SAM.gov</a></b>		
Do we have up-to-date data in SAM?		
<b>Veteran Reporting (FAR Clause 52.222-37)</b>		
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.

## **Bid Submittal Checklist**

**Driving Directions to our Vancouver Washington Office:**

**[Directions to WFLHD](#)**

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

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## 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)

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

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## 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)

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

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## **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)

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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.

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## **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)

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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:

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## **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.

<b>BID BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	<b>OMB Control Number: 9000-0045</b> <b>Expiration Date: 8/31/2025</b>
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) *(Name and business address)*

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NUMBER
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS		69056723B0000005
					FOR <i>(Construction, Supplies or Services)</i>	Construction: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

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.	

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

# TABLE OF CONTENTS

01/06/23–FP14

<u>DESCRIPTION</u>	<u>PAGE</u>
Notice to Bidders .....	A-1
Solicitation, Offer, and Award (SF 1442).....	A-3
Bid Schedule .....	A-7
Solicitation Provisions .....	B-1
Contract Clauses .....	C-1
General Wage Decision .....	D-1
SCRs Table of Contents	
<div><b>SPECIAL CONTRACT REQUIREMENTS (SCR)</b> The following Special Contract Requirements amend and supplement the <i>Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-14)</i>, U.S. Department of Transportation, Federal Highway Administration.</div>	
Division 100.....	E-1
Division 150.....	E-29
Division 200.....	F-1
Division 400.....	F-4
Division 600.....	F-5
Division 700.....	G-1
Permits .....	H-1
Fire Protection and Suppression Plan .....	I-1

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## NOTICE TO BIDDERS

01/06/23-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 approximately 7 miles from Forks in Clallam and Jefferson Counties, WA.

**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 05/16/2023.**

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/28d3a5dbcf924df198d69b33b8c6f95b/view>.

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

**Electronic Plan Sheets.** This solicitation includes electronic plan sheets available at <https://sam.gov/opp/28d3a5dbcf924df198d69b33b8c6f95b/view>.

**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).

Notice to Bidders

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

**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](mailto: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.

Notice to Bidders

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

**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](mailto: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).

**Progress Schedules.** This project includes new specifications for Prosecution and Progress and for Schedules for Construction Contracts. Carefully review Special Contract Requirements Section 108 - Prosecution and Progress, and Section 155 – Schedules for Construction Contracts.



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<b>SOLICITATION, OFFER, AND AWARD</b> (Construction, Alteration, or Repair)		1. SOLICITATION NO. 69056723B000005	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 04/20/2023	PAGE OF PAGES 1 2
<b>IMPORTANT -- The "offer" section on the reverse must be fully completed by offeror.</b>					
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.		6. PROJECT NO. See Block 10	
7. ISSUED BY	CODE	690567		8. ADDRESS OFFER TO	
Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661		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 WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements.

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? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "YES", indicate within how many calendar days after award in Item 12b.)	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>1400</u> (hour) local time <u>05/23/2023</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

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) ( )
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) MICHAEL KENDRO	
30b. SIGNATURE	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](mailto: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](mailto:wfl.plans-spec@dot.gov).

**QUESTIONS/ANSWERS POSTED ONLINE.** You can view questions and answers on the Contract Opportunities Website [SAM.gov](http://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**, the bid opening summary will be posted on the Contract Opportunities Website [SAM.gov](http://SAM.gov) shortly after bid opening. Bid tabulations will be available on [SAM.gov](http://SAM.gov) approximately 3 working 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 **\$1,000,000** and **\$2,000,000**.

## 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	15705-1400	SOIL EROSION CONTROL, FIBER ROLL				
			2,050	LNFT	\$__	\$__
A0140	15706-0200	SOIL EROSION CONTROL, CHECK DAM (FIBER ROLL)				
			9	EACH	\$__	\$__
A0160	15706-0200	SOIL EROSION CONTROL, CHECK DAM (FILTER ROCK)				
			5	EACH	\$__	\$__
A0180	15706-1300	SOIL EROSION CONTROL, INLET PROTECTION TYPE C				
			1	EACH	\$__	\$__
A0200	20103-0000	CLEARING AND GRUBBING				
			5,600	SQYD	\$__	\$__
A0220	20301-0700	REMOVAL OF DELINEATOR				
			1	EACH	\$__	\$__
A0240	20301-2400	REMOVAL OF SIGN				
			3	EACH	\$__	\$__
A0260	20302-0800	REMOVAL OF FENCE, BARBED WIRE				
			283	LNFT	\$__	\$__
A0280	20302-2100	REMOVAL OF PIPE CULVERT				
			41	LNFT	\$__	\$__

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WA FLAP JEFFER 150009(1)

Project Name:Undi Road Bypass Improvements

A0300	20401-0000	ROADWAY EXCAVATION	7,000	CUYD	\$ _____	\$ _____
A0320	20701-0200	SEPARATION-STABILIZATION GEOTEXTILE, CLASS 1, TYPE B	4,000	SQYD	\$ _____	\$ _____
A0340	20702-0600	GEOTEXTILE FILTER, CLASS 2, TYPE A	700	SQYD	\$ _____	\$ _____
A0360	21101-1000	ROADWAY OBLITERATION, METHOD 1	38	SQYD	\$ _____	\$ _____
A0380	25101-0200	PLACED RIPRAP, METHOD A, CLASS 2	5	CUYD	\$ _____	\$ _____
A0400	25120-0200	RIPRAP DITCH, METHOD A, CLASS 2	580	LNFT	\$ _____	\$ _____
A0420	30202-2000	ROADWAY AGGREGATE, METHOD 2	2,500	TON	\$ _____	\$ _____
A0440	40702-1200	CHIP SEAL, TYPE 2B	9,500	SQYD	\$ _____	\$ _____
A0480	60201-0400	12-INCH PIPE CULVERT	34	LNFT	\$ _____	\$ _____
A0500	60201-0600	18-INCH PIPE CULVERT	161	LNFT	\$ _____	\$ _____
A0520	60210-0400	END SECTION FOR 12-INCH PIPE CULVERT	2	EACH	\$ _____	\$ _____
A0540	60210-0600	END SECTION FOR 18-INCH PIPE CULVERT	4	EACH	\$ _____	\$ _____
A0560	60404-1000	CATCH BASIN, FLH TYPE 1 (METAL FRAME AND GRATE TYPE A)	1	EACH	\$ _____	\$ _____
A0580	60501-0000	STANDARD UNDERDRAIN SYSTEM	140	LNFT	\$ _____	\$ _____

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WA FLAP JEFFER 150009(1)

Project Name:Undi Road Bypass Improvements



A0600	62502-0000	TURF ESTABLISHMENT	6,000	SQYD	\$ _____	\$ _____
A0620	62516-2000	MULCHING, HYDRAULIC METHOD	6,000	SQYD	\$ _____	\$ _____
A0640	62901-1000	ROLLED EROSION CONTROL PRODUCT, TYPE 3.B	3,700	SQYD	\$ _____	\$ _____
A0660	63304-0900	SIGNS, ALUMINUM PANELS, TYPE 3 SHEETING	56	SQFT	\$ _____	\$ _____
A0680	63305-0400	POSTS, STEEL, 2-INCH X 2-INCH	68	LNFT	\$ _____	\$ _____
A0700	63305-1800	POSTS, WOOD, 4-INCH X 6-INCH	16	LNFT	\$ _____	\$ _____
A0720	63316-1000	REMOVE AND RESET SIGN	4	EACH	\$ _____	\$ _____
A0740	63316-2000	REMOVE AND RESET DELINEATOR	2	EACH	\$ _____	\$ _____
A0760	63401-0300	PAVEMENT MARKINGS, TYPE B, SOLID (WHITE EDGE LINE)	1,768	LNFT	\$ _____	\$ _____
A0780	63401-0300	PAVEMENT MARKINGS, TYPE B, SOLID (DOUBLE YELLOW CENTERLINE)	4,082	LNFT	\$ _____	\$ _____
A0800	63401-0300	PAVEMENT MARKINGS, TYPE B, SOLID (WHITE STOP BAR)	28	LNFT	\$ _____	\$ _____
A0820	63502-1300	TEMPORARY TRAFFIC CONTROL, DRUM	195	EACH	\$ _____	\$ _____
A0840	63504-1000	TEMPORARY TRAFFIC CONTROL, CONSTRUCTION SIGN	426	SQFT	\$ _____	\$ _____
A0860	63506-0500	TEMPORARY TRAFFIC CONTROL, FLAGGER	1,432	HOUR	\$ _____	\$ _____

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WA FLAP JEFFER 150009(1)

Project Name:Undi Road Bypass Improvements

Submitted by:\_\_\_\_\_

Schedule Total:\_\_\_\_\_

## 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.

**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 \$45 million. If your average annual gross receipts for the past 3 years are above \$45 million you are a large business for this solicitation. If they are below \$45 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. (MAR 2023)**

(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 ***\$45 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, or 150 employees for information technology value-added resellers under NAICS code 541519, 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 II and III.) This provision applies to solicitations containing the clause at [52.225-3](#).
  - (A) If the acquisition value is less than \$50,000, the basic provision applies.
  - (B) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.
  - (C) 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](http://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 (FAPIS) 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 FAPIS 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](mailto: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: 3.8%**

**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 area" is **Jefferson and Clallam Counties, Oregon**.

#### **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.

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## **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](http://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](http://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.

**52.211-1 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-price** 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:  
**There will be no government arranged site visits. The site is readily available for inspection. Prospective offerors are encouraged to make their own arrangements to inspect the site.**

## 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 contract 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–

Contract Clauses

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

“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/execomp.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/execomp.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](http://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](http://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](http://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 (FAPIS) 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 FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS 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 FAPIS 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 FAPIS 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 FAPIS 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 FAPIS.
  - (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 **10/12/2023** 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 07/10/2023**. 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.

**52.219-6 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](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.]  
☒ 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 (MAR 2023)**

*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, or 150 employees for information technology value-added resellers under NAICS code 541519, 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](http://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](http://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](http://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](http://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](http://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](http://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](mailto: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.

**52.222-55 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](http://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 (OCT 2022)**

- (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.

*Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR [25.105](#).

*Critical item* means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR [25.105](#).

*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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. 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**
- (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.
    - (A) *For domestic construction material that is not a critical item or does not contain critical components.*
      - (1) 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;
      - (2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.
      - (3) The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.
    - (B) *For domestic construction material that is a critical item or contains critical components.*
      - (1) The cost of a particular domestic construction material that is a critical item or contains critical components, 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 plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR [25.105](#).
      - (2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest

foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

- (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) 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)*
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			
<p>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].</p> <p>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</p> <p>[Include other applicable supporting information.]</p>			

#### 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 Chapter V, 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 Chapter V 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 (Dec 2022)**



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. 4601 note](#) prec.), 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.

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(Name)

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(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)**

Contract Clauses

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



- (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.

- (3) 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. (MAR 2023)**

- (a)
- (1) In accordance with [31 U.S.C. 3903](#) and [10 U.S.C. 3801](#), within 15 days after 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.
  - (2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the 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 stop-page. 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) **waa-jeffer150009-1\_Final Geotechnical Report.pdf**
  - (3) **waa-jeffer150009-1\_proposed-alignment.pdf**
  - (4) **waa-jeffer150009-1\_XS.pdf**
  - (5) **waa-jeffer150009-1\_XS\_culverts.pdf**
  - (6) **waa-jeffer150009-1\_Earthwork.pdf**
  - (7) **waa-jeffer150009-1\_Control\_Point\_Coordinates.xlsx**
  - (8) **Final Undi Rd Bypass BA\_2021-11-19.pdf**
  - (9) **UNDI BYPASS EPA\_CompiledSWPPP\_Final\_13FEB2023.pdf**
  - (10) **waa-jeffer150009-1\_ROW Plans.pdf**
  - (11) **waa-jeffer150009-1\_Project-Name-Change.pdf**
  - (12) **WA FLAP JEFFER 150009(1)\_Physical Data.zip**
    - (i) **waa-jeffer150009-1\_Proposed-finish-surface\_Site\_1.xml**
    - (ii) **waa-jeffer150009-1\_Proposed-finish-surface\_Site\_2.xml**
    - (iii) **waa-jeffer150009-1\_Proposed-3D-Breakline.dxf**
    - (iv) **waa-jeffer150009-1\_Horizontal\_alignment\_and\_vertical\_profile\_UB1.xml**
    - (v) **waa-jeffer150009-1\_Horizontal\_alignment\_and\_vertical\_profile\_U.xml**

(vi) waa-jeffer150009-1\_existing-ground-surface.xml

#### **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)**

Contract Clauses

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



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:

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**52.244-6 Subcontracts for Commercial Items (MAR 2023)**

## (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. Subtitle A, Part V, Subpart G Note).
- (xix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) , 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 .

#### **52.246-12 Inspection of Construction (Aug 1996)**

- (a) *Definition*. “Work” includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Government inspections and tests are for the sole benefit of the Government and do not—
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer’s written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- (g) If the Contractor does not promptly replace or correct rejected work, the Government may—
  - (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
  - (2) Terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

#### **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 owned 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.



**General Wage Decision**

General Decision Number: WA20230001 02/03/2023

Superseded General Decision Number: WA20220001

State: Washington

Construction Type: Highway

Counties: Washington Statewide.

HIGHWAY(Excludes D.O.E. Hanford Site in Benton and Franklin Counties)

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 \$16.20 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 2023. 
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   \$12.15 per hour (or the   applicable wage rate listed   on this wage determination,   if it is higher) for all   hours spent performing on   that contract in 2023. 

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 <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	02/03/2023

CARP0003-006 06/01/2021

SOUTHWEST WASHINGTON: CLARK, COWLITZ, KLICKITAT, LEWIS (Piledriver only), PACIFIC (South of a straight line made by extending the north boundary line of Wahkiakum County west to Willapa Bay to the Pacific Ocean), SKAMANIA, and WAHKIAKUM Counties.

	Rates	Fringes
Carpenters:		
CARPENTERS.....	\$ 44.38	16.87
DIVERS TENDERS.....	\$ 49.09	16.87
DIVERS.....	\$ 93.09	16.87
DRYWALL.....	\$ 44.38	16.87
MILLWRIGHTS.....	\$ 46.89	16.87
PILEDRIVERS.....	\$ 44.97	16.87

DEPTH PAY:

50 TO 100 FEET \$1.00 PER FOOT OVER 50 FEET  
 101 TO 150 FEET \$1.50 PER FOOT OVER 101 FEET  
 151 TO 200 FEET \$2.00 PER FOOT OVER 151 FEET

Zone Differential (Add up Zone 1 rates):

Zone 2 - \$0.85  
 Zone 3 - 1.25  
 Zone 4 - 1.70  
 Zone 5 - 2.00  
 Zone 6 - 3.00

BASEPOINTS: ASTORIA, LONGVIEW, PORTLAND, THE DALLES, AND VANCOUVER, (NOTE: All dispatches for Washington State Counties: Cowlitz, Wahkiakum and Pacific shall be from

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

Longview Local #1707 and mileage shall be computed from that point.)

ZONE 1: Projects located within 30 miles of the respective city hall of the above mentioned cities

ZONE 2: Projects located more than 30 miles and less than 40 miles of the respective city of the above mentioned cities

ZONE 3: Projects located more than 40 miles and less than 50 miles of the respective city of the above mentioned cities

ZONE 4: Projects located more than 50 miles and less than 60 miles of the respective city of the above mentioned cities.

ZONE 5: Projects located more than 60 miles and less than 70 miles of the respective city of the above mentioned cities

ZONE 6: Projects located more than 70 miles of the respected city of the above mentioned cities

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CARP0030-004 06/01/2021

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC (North of a straight line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean), PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM Counties

	Rates	Fringes
CARPENTER		
BRIDGE CARPENTERS.....	\$ 49.18	19.01
CARPENTERS ON CREOSOTE		
MATERIAL.....	\$ 47.02	19.01
CARPENTERS.....	\$ 49.18	19.01
DIVERS TENDER.....	\$ 54.54	19.01
DIVERS.....	\$ 103.43	19.01
MILLWRIGHT AND MACHINE		
ERECTORS.....	\$ 50.68	19.01
PILEDRIIVER, DRIVING,		
PULLING, CUTTING, PLACING		
COLLARS, SETTING, WELDING		
OR CRESOTE TREATED		
MATERIAL, ALL PILING.....	\$ 49.58	19.01

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - ALL CLASSIFICATIONS EXCEPT MILLWRIGHTS AND PILEDRIIVERS

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Seattle	Olympia	Bellingham
Auburn	Bremerton	Anacortes
Renton	Shelton	Yakima
Aberdeen-Hoquiam	Tacoma	Wenatchee
Ellensburg	Everett	Port Angeles
Centralia	Mount Vernon	Sunnyside
Chelan	Pt. Townsend	

## Zone Pay:

0 -25 radius miles	Free
26-35 radius miles	\$1.00/hour
36-45 radius miles	\$1.15/hour
46-55 radius miles	\$1.35/hour
Over 55 radius miles	\$1.55/hour

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - MILLWRIGHT AND PILEDRIVER ONLY)

Hourly Zone Pay shall be computed from Seattle Union Hall, Tacoma City center, and Everett City center

## Zone Pay:

0 -25 radius miles	Free
26-45 radius miles	\$ .70/hour
Over 45 radius miles	\$1.50/hour

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CARP0059-002 06/01/2019

ADAMS, ASOTIN, BENTON, CHELAN (East of 120th meridian), COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD, GRANT (East of 120th meridian), KITTITAS (East of 120th meridian), LINCOLN, OKANOGAN (East of 120th meridian), PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN, and YAKIMA (East of 120<sup>th</sup> meridian) Counties

	Rates	Fringes
CARPENTER		
GROUP 1.....	\$ 35.47	16.88
GROUP 2.....	\$ 47.42	18.96
GROUP 3.....	\$ 36.66	16.88
GROUP 4.....	\$ 36.66	16.88
GROUP 5.....	\$ 83.96	16.88
GROUP 6.....	\$ 40.23	16.88
GROUP 7.....	\$ 41.23	16.88
GROUP 8.....	\$ 37.66	16.88
GROUP 9.....	\$ 44.23	16.88

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

CARPENTER & DIVER CLASSIFICATIONS:

GROUP 1: Carpenter

GROUP 2: Millwright, Machine Erector

GROUP 3: Piledriver - includes driving, pulling, cutting, placing collars, setting, welding, or creosote treated material, on all piling

GROUP 4: Bridge, Dock, and Wharf carpenters

GROUP 5: Diver Wet

GROUP 6: Diver Tender, Manifold Operator, ROV Operator

GROUP 7: Diver Standby

GROUP 8: Assistant Diver Tender, ROV Tender/Technician

GROUP 9: Manifold Operator-Mixed Gas

ZONE PAY:

ZONE 1	0-45 MILES	FREE
ZONE 2	45-100	\$4.00/PER HOUR
ZONE 3	OVER 100 MILES	\$6.00/PER HOUR

DISPATCH POINTS:

CARPENTERS/MILLWRIGHTS: PASCO (515 N Neel Street) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

CARPENTERS/PILEDRIIVER: SPOKANE (127 E. AUGUSTA AVE.) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

CARPENTERS: WENATCHEE (27 N. CHELAN) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

CARPENTERS: COEUR D' ALENE (1839 N. GOVERNMENT WAY) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

CARPENTERS: MOSCOW (306 N. JACKSON) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

DEPTH PAY FOR DIVERS BELOW WATER SURFACE:

50-100 feet \$2.00 per foot  
101-150 feet \$3.00 per foot  
151-220 feet \$4.00 per foot  
221 feet and deeper \$5.00 per foot

PREMIUM PAY FOR DIVING IN ENCLOSURES WITH NO VERTICAL ASCENT:

0-25 feet Free  
26-300 feet \$1.00 per Foot

SATURATION DIVING:

The standby rate applies until saturation starts. The saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. the diver rate shall be paid for all saturation hours.

WORK IN COMBINATION OF CLASSIFICATIONS:

Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

HAZMAT PROJECTS:

Anyone working on a HAZMAT job (task), where HAZMAT certification is required, shall be compensated at a premium, in addition to the classification working in as follows:

LEVEL D + \$.25 per hour - This is the lowest level of protection. No respirator is used and skin protection is minimal.

LEVEL C + \$.50 per hour - This level uses an air purifying respirator or additional protective clothing.

LEVEL B + \$.75 per hour - Uses same respirator protection as Level A. Supplied air line is provided in conjunction with a chemical "splash suit".

LEVEL A +\$1.00 per hour - This level utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line.

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 CARP0770-003 06/01/2021

WEST OF 120TH MERIDIAN FOR THE FOLLOWING COUNTIES:  
 CHELAN, DOUGLAS, GRANT, KITTITAS, OKANOGAN, and YAKIMA

	Rates	Fringes
CARPENTER		
CARPENTERS ON CREOSOTE		
MATERIAL.....	\$ 47.02	19.01
CARPENTERS.....	\$ 49.18	19.01
DIVERS TENDER.....	\$ 54.54	19.01
DIVERS.....	\$ 103.43	19.01
MILLWRIGHT AND MACHINE		
ERECTORS.....	\$ 50.68	19.01
PILEDRIIVER, DRIVING, PULLING, CUTTING, PLACING COLLARS, SETTING, WELDING OR CRESOTE TREATED		
MATERIAL, ALL PILING.....	\$ 49.58	19.01

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - ALL  
 CLASSIFICATIONS EXCEPT MILLWRIGHTS AND PILEDRIIVERS)

Hourly Zone Pay shall be paid on jobs located outside of the  
 free zone computed from the city center of the following  
 listed cities:

Seattle	Olympia	Bellingham
Auburn	Bremerton	Anacortes
Renton	Shelton	Yakima
Aberdeen-Hoquiam	Tacoma	Wenatchee
Ellensburg	Everett	Port Angeles
Centralia	Mount Vernon	Sunnyside
Chelan	Pt. Townsend	

Zone Pay:

0 -25 radius miles	Free
26-35 radius miles	\$1.00/hour
36-45 radius miles	\$1.15/hour
46-55 radius miles	\$1.35/hour
Over 55 radius miles	\$1.55/hour

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - MILLWRIGHT  
 AND PILEDRIIVER ONLY)

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

Hourly Zone Pay shall be computed from Seattle Union Hall, Tacoma City center, and Everett City center

Zone Pay:

0 -25 radius miles	Free
26-45 radius miles	\$ .70/hour
Over 45 radius miles	\$1.50/hour

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ELEC0046-001 08/01/2022

CALLAM, JEFFERSON, KING AND KITSAP COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 72.29	27.07
ELECTRICIAN.....	\$ 65.72	26.87

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\* ELEC0048-003 01/01/2023

CLARK, KLINKITAT AND SKAMANIA COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 44.22	21.50
ELECTRICIAN.....	\$ 57.35	27.54

HOURLY ZONE PAY:

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Portland, The Dalles, Hood River, Tillamook, Seaside and Astoria

Zone Pay:

Zone 1: 31-50 miles	\$1.50/hour
Zone 2: 51-70 miles	\$3.50/hour
Zone 3: 71-90 miles	\$5.50/hour
Zone 4: Beyond 90 miles	\$9.00/hour

\*These are not miles driven. Zones are based on Delorme Street Atlas USA 2006 plus.

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\* ELEC0048-029 01/01/2023

COWLITZ AND WAHKIAKUM COUNTY

	Rates	Fringes
CABLE SPlicer.....	\$ 44.22	21.50
ELECTRICIAN.....	\$ 57.35	27.54

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ELEC0073-001 07/01/2022

ADAMS, FERRY, LINCOLN, PEND OREILLE, SPOKANE, STEVENS, WHITMAN  
COUNTIES

	Rates	Fringes
CABLE SPlicer.....	\$ 34.10	16.68
ELECTRICIAN.....	\$ 41.30	20.09

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\* ELEC0076-002 02/01/2023

GRAYS HARBOR, LEWIS, MASON, PACIFIC, PIERCE, AND THURSTON  
COUNTIES

	Rates	Fringes
CABLE SPlicer.....	\$ 53.15	23.81
ELECTRICIAN.....	\$ 55.14	24.86

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ELEC0112-005 06/01/2022

ASOTIN, BENTON, COLUMBIA, FRANKLIN, GARFIELD, KITTITAS, WALLA  
WALLA, YAKIMA COUNTIES

	Rates	Fringes
CABLE SPlicer.....	\$ 54.34	24.26
ELECTRICIAN.....	\$ 51.75	24.18

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ELEC0191-003 06/01/2020

ISLAND, SAN JUAN, SNOHOMISH, SKAGIT AND WHATCOM COUNTIES

	Rates	Fringes
CABLE SPlicer.....	\$ 44.23	17.73
ELECTRICIAN.....	\$ 47.95	26.16

ELEC0191-004 06/01/2018

CHELAN, DOUGLAS, GRANT AND OKANOGAN COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 40.82	17.63
ELECTRICIAN.....	\$ 42.45	21.34

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ENGI0302-003 06/01/2022

CHELAN (WEST OF THE 120TH MERIDIAN), CLALLAM, DOUGLAS (WEST OF THE 120TH MERIDIAN), GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, KITTITAS, MASON, OKANOGAN (WEST OF THE 120TH MERIDIAN), SAN JUNA, SKAGIT, SNOHOMISH, WHATCOM AND YAKIMA (WEST OF THE 120TH MERIDIAN) COUNTIES

Zone 1 (0-25 radius miles):

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1A.....	\$ 54.20	24.47
Group 1AA.....	\$ 54.98	24.47
Group 1AAA.....	\$ 55.78	24.47
Group 1.....	\$ 53.40	24.47
Group 2.....	\$ 52.72	24.47
Group 3.....	\$ 52.12	24.47
Group 4.....	\$ 48.78	24.47

Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) - \$1.00

Zone 3 (Over 45 radius miles) - \$1.30

BASEPOINTS: Aberdeen, Bellingham, Bremerton, Everett, Kent, Mount Vernon, Port Angeles, Port Townsend, Seattle, Shelton, Wenatchee, Yakima

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1AAA - Cranes-over 300 tons, or 300 ft of boom  
(including jib with attachments)

GROUP 1AA - Cranes 200 to 300 tons, or 250 ft of boom  
(including jib with attachments); Tower crane over 175 ft  
in height, base to boom

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 100 tons and over; Tower crane up to 175 ft in height base to boom; Loaders-overhead, 8 yards and over; Shovels, excavator, backhoes-6 yards and over with attachments

GROUP 1 - Cableway; Cranes 45 tons thru 99 tons, under 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 45 tons thru 99 tons; Derricks on building work; Excavator, shovel, backhoes over 3 yards and under 6 yards; Hard tail end dump articulating off-road equipment 45 yards and over; Loader- overhead 6 yards to, but not including 8 yards; Mucking machine, mole, tunnel, drill and/or shield; Quad 9, HD 41, D-10; Remote control operator on rubber tired earth moving equipment; Rollagon; Scrapers-self propelled 45 yards and over; Slipform pavers; Transporters, all truck or track type

GROUP 2 - Barrier machine (zipper); Batch Plant Operator-Concrete; Bump Cutter; Cranes, 20 tons thru 44 tons with attachments; Crane-overhead, bridge type-20 tons through 44 tons; Chipper; Concrete Pump-truck mount with boom attachment; Crusher; Deck Engineer/Deck Winches (power); Drilling machine; Excavator, shovel, backhoe-3yards and under; Finishing Machine, Bidwell, Gamaco and similar equipment; Guardrail punch; Horizontal/directional drill operator; Loaders-overhead under 6 yards; Loaders-plant feed; Locomotives-all; Mechanics-all; Mixers-asphalt plant; Motor patrol graders-finishing; Piledriver (other than crane mount); Roto-mill, roto-grinder; Screedman, spreader, topside operator-Blaw Knox, Cedar Rapids, Jaeger, Caterpillar, Barbar Green; Scraper-self propelled, hard tail end dump, articulating off-road equipment-under 45 yards; Subgrade trimmer; Tractors, backhoes-over 75 hp; Transfer material service machine-shuttle buggy, blaw knox-roadtec; Truck crane oiler/driver-100 tons and over; Truck Mount portable conveyor; Yo Yo Pay dozer

GROUP 3 - Conveyors; Cranes-thru 19 tons with attachments; A-frame crane over 10 tons; Drill oilers-auger type, truck or crane mount; Dozers-D-9 and under; Forklift-3000 lbs. and over with attachments; Horizontal/directional drill locator; Outside hoists-(elevators and manlifts), air tuggers, strato tower bucket elevators; Hydralifts/boom trucks over 10 tons; Loader-elevating type, belt; Motor patrol grader-nonfinishing; Plant oiler- asphalt, crusher; Pumps-concrete; Roller, plant mix or multi-lift materials;

Saws-concrete; Scrapers-concrete and carry-all; Service engineer-equipment; Trenching machines; Truck Crane Oiler/Driver under 100 tons; Tractors, backhoe 75 hp and under

GROUP 4 - Assistant Engineer; Bobcat; Brooms; Compressor; Concrete finish machine-laser screed; Cranes-A frame-10 tons and under; Elevator and Manlift-permanent or shaft type; Gradechecker, Stakehop; Forklifts under 3000 lbs. with attachments; Hydralifts/boom trucks, 10 tons and under; Oil distributors, blower distribution and mulch seeding operator; Pavement breaker; Posthole digger, mechanical; Power plant; Pumps, water; Rigger and Bellman; Roller-other than plant mix; Wheel Tractors, farmall type; Shotcrete/gunite equipment operator

#### HANDLING OF HAZARDOUS WASTE MATERIALS:

Personnel in all craft classifications subject to working inside a federally designated hazardous perimeter shall be eligible for compensation in accordance with the following group schedule relative to the level of hazardous waste as outlined in the specific hazardous waste project site safety plan.

H-1 Base wage rate when on a hazardous waste site when not outfitted with protective clothing

H-2 Class "C" Suit - Base wage rate plus \$ .25 per hour.

H-3 Class "B" Suit - Base wage rate plus \$ .50 per hour.

H-4 Class "A" Suit - Base wage rate plus \$ .75 per hour.

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ENGI0370-002 06/01/2021

ADAMS, ASOTIN, BENTON, CHELAN (EAST OF THE 120TH MERIDIAN), COLUMBIA, DOUGLAS (EAST OF THE 120TH MERIDIAN), FERRY, FRANKLIN, GARFIELD, GRANT, LINCOLN, OKANOGAN (EAST OF THE 120<sup>TH</sup> MERIDIAN), PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN AND YAKIMA (EAST OF THE 120TH MERIDIAN) COUNTIES

## ZONE 1:

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1.....	\$ 29.76	20.65
GROUP 2.....	\$ 30.08	20.65
GROUP 3.....	\$ 30.69	20.65
GROUP 4.....	\$ 30.85	20.65
GROUP 5.....	\$ 31.01	20.65
GROUP 6.....	\$ 31.21	20.65
GROUP 7.....	\$ 31.56	20.65
GROUP 8.....	\$ 32.66	20.65

ZONE DIFFERENTIAL (Add to Zone 1 rate): Zone 2 - \$2.00

Zone 1: Within 45 mile radius of Spokane, Pasco, Washington;  
Lewiston, Idaho

Zone 2: Outside 45 mile radius of Spokane, Pasco,  
Washington; Lewiston, Idaho

## POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bit Grinders; Bolt Threading Machine; Compressors (under 2000 CFM, gas, diesel, or electric power); Deck Hand; Fireman & Heater Tender; Hydro-seeder, Mulcher, Nozzleman; Oiler Driver, & Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade, including seal and chip coatings (farm type, Case, John Deere & similar, or Compacting Vibrator), except when pulled by Dozer with operable blade; Welding Machine; Crane Oiler-Driver (CLD required) & Cable Tender, Mucking Machine

GROUP 2: A-frame Truck (single drum); Assistant Refrigeration Plant (under 1000 ton); Assistant Plant Operator, Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2000 CFM or over, 2 or more, gas diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Ditch Witch or similar; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, hydra-lift & similar; Gin Trucks (pipeline); Hoist, single drum; Loaders (bucket elevators and conveyors); Longitudinal Float; Mixer (portable-concrete); Pavement Breaker, Hydra-Hammer & similar; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator (self-propelled); Railroad Tamper Jack Operator (self-propelled); Spray Curing Machine

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

(concrete); Spreader Box (self-propelled); Straddle Buggy (Ross & similar on construction job only); Tractor (Farm type R/T with attachment, except Backhoe); Tugger Operator

GROUP 3: A-frame Truck (2 or more drums); Assistant Refrigeration Plant & Chiller Operator (over 1000 ton); Backfillers (Cleveland & similar); Batch Plant & Wet Mix Operator, single unit (concrete); Belt-Crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Bending Machine; Bob Cat (Skid Steer); Boring Machine (earth); Boring Machine (rock under 8 inch bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning & Doping Machine (pipeline); Deck Engineer; Elevating Belt-type Loader (Euclid, Barber Green & similar); Elevating Grader-type Loader (Dumora, Adams or similar); Generator Plant Engineers (diesel or electric); Gunnite Combination Mixer & Compressor; Locomotive Engineer; Mixermobile; Mucking Machine; Posthole Auger or Punch; Pump (grout or jet); Soil Stabilizer (P & H or similar); Spreader Machine; Dozer/Tractor (up to D-6 or equivalent) and Traxcavator; Traverse Finish Machine; Turnhead Operator

GROUP 4: Concrete Pumps (squeeze-crete, flow-crete, pump-crete, Whitman & similar); Curb Extruder (asphalt or concrete); Drills (churn, core, calyx or diamond); Equipment Serviceman; Greaser & Oiler; Hoist (2 or more drums or Tower Hoist); Loaders (overhead & front-end, under 4 yds. R/T); Refrigeration Plant Engineer (under 1000 ton); Rubber-tired Skidders (R/T with or without attachments); Surface Heater & Plant Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with re-screening); Vacuum Drill (reverse circulation drill under 8 inch bit)

GROUP 5: Backhoe (under 45,000 gw); Backhoe & Hoe Ram (under 3/4 yd.); Carrydeck & Boom Truck (under 25 tons); Cranes (25 tons & under), all attachments including clamshell, dragline; Derricks & Stifflegs (under 65 tons); Drilling Equipment (8 inch bit & over) (Robbins, reverse circulation & similar); Hoe Ram; Piledriving Engineers; Paving (dual drum); Railroad Track Liner Operator (self-propelled); Refrigeration Plant Engineer (1000 tons & over); Signalman (Whirleys, Highline Hammerheads or similar); Grade Checker

GROUP 6: Asphalt Plant Operator; Automatic Subgrader (Ditches & Trimmers) (Autograde, ABC, R.A. Hansen & similar on grade

wire); Backhoe (45,000 gw and over to 110,000 gw); Backhoes & Hoe Ram (3/4 yd. to 3 yd.); Batch Plant (over 4 units); Batch & Wet Mix Operator (multiple units, 2 & incl. 4); Blade Operator (motor patrol & attachments); Cable Controller (dispatcher); Compactor (self-propelled with blade); Concrete Pump Boom Truck; Concrete Slip Form Paver; Cranes (over 25 tons, to and including 45 tons), all attachments including clamshell, dragline; Crusher, Grizzle & Screening Plant Operator; Dozer, 834 R/T & similar; Drill Doctor; Loader Operator (front-end & overhead, 4 yds. incl. 8 yds.); Multiple Dozer Units with single blade; Paving Machine (asphalt and concrete); Quad-Track or similar equipment; Rollerman (finishing asphalt pavement); Roto Mill (pavement grinder); Scrapers, all, rubber-tired; Screed Operator; Shovel (under 3 yds.); Trenching Machines (7 ft. depth & over); Tug Boat Operator Vactor guzzler, super sucker; Lime Batch Tank Operator (REcycle Train); Lime Brain Operator (Recycle Train); Mobile Crusher Operator (Recycle Train)

GROUP 7: Backhoe (over 110,000 gw); Backhoes & Hoe Ram (3 yds & over); Blade (finish & bluetop) Automatic, CMI, ABC, Finish Athey & Huber & similar when used as automatic; Cableway Operators; Concrete Cleaning/Decontamination machine operator; Cranes (over 45 tons to but not including 85 tons), all attachments including clamshell and dragline; Derricks & Stiffleys (65 tons & over); Elevating Belt (Holland type); Heavy equipment robotics operator; Loader (360 degrees revolving Koehring Scooper or similar); Loaders (overhead & front-end, over 8 yds. to 10 yds.); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yds. & over); Whirleys & Hammerheads, ALL; H.D. Mechanic; H.D. Welder; Hydraulic Platform Trailers (Goldhofer, Shaurerly and Similar); Ultra High Pressure Waterjet Cutting Tool System Operator (30,000 psi); Vacuum Blasting Machine Operator

GROUP 8: Cranes (85 tons and over, and all climbing, overhead, rail and tower), all attachments including clamshell, dragline; Loaders (overhead and front-end, 10 yards and over); Helicopter Pilot

BOOM PAY: (All Cranes, Including Tower)  
 180 ft to 250 ft       \$ .50 over scale  
 Over 250 ft           \$ .80 over scale

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

## NOTE:

In computing the length of the boom on Tower Cranes, they shall be measured from the base of the Tower to the point of the boom.

## HAZMAT:

Anyone working on HAZMAT jobs, working with supplied air shall receive \$1.00 an hour above classification.

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ENGI0612-001 06/01/2020

## PIERCE County

ON PROJECTS DESCRIBED IN FOOTNOTE A BELOW, THE RATE FOR EACH GROUP SHALL BE 90% OF THE BASE RATE PLUS FULL FRINGE BENEFITS. ON ALL OTHER WORK, THE FOLLOWING RATES APPLY.

## Zone 1 (0-25 radius miles):

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1A.....	\$ 49.50	22.47
GROUP 1AA.....	\$ 50.22	22.47
GROUP 1AAA.....	\$ 50.94	22.47
GROUP 1.....	\$ 48.77	22.47
GROUP 2.....	\$ 48.15	22.47
GROUP 3.....	\$ 47.60	22.47
GROUP 4.....	\$ 44.55	22.47

## Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) = \$1.00

Zone 3 (Over 45 radius miles) - \$1.30

BASEPOINTS: CENTRALIA, OLYMPIA, TACOMA

## POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 AAA - Cranes-over 300 tons or 300 ft of boom  
(including jib with attachments)

GROUP 1AA - Cranes- 200 tonsto 300 tons, or 250 ft of boom  
(including jib with attachments; Tower crane over 175 ft in  
height, bas to boom

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



(including jib with attachments); Crane-overhead, bridge type, 100 tons and over; Tower crane up to 175 ft in height base to boom; Loaders-overhead, 8 yards and over; Shovels, excavator, backhoes-6 yards and over with attachments

GROUP 1 - Cableway; Cranes 45 tons thru 99 tons under 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 45 tons thru 99 tons; Derricks on building work; Excavator, shovel, backhoes over 3 yards and under 6 yards; Hard tail end dump articulating off-road equipment 45 yards and over; Loader- overhead, 6 yards to, but not including, 8 yards; Mucking machine, mole, tunnel, drill and/or shield; Quad 9 HD 41, D-10; Remote control operator on rubber tired earth moving equipment; Rollagon; Scrapers-self-propelled 45 yards and over; Slipform pavers; Transporters, all track or truck type

GROUP 2 - Barrier machine (zipper); Batch Plant Operator-concrete; Bump Cutter; Cranes, 20 tons thru 44 tons with attachments; Crane-Overhead, bridge type, 20 tons through 44 tons; Chipper; Concrete pump-truck mount with boom attachment; Crusher; Deck engineer/deck winches (power); Drilling machine; Excavator, shovel, backhoe-3 yards and under; Finishing machine, Bidwell, Gamaco and similar equipment; Guardrail punch; Loaders, overhead under 6 yards; Loaders-plant feed; Locomotives-all; Mechanics- all; Mixers, asphalt plant; Motor patrol graders, finishing; Piledriver (other than crane mount); Roto-mill, roto-grinder; Screedman, spreader, topside operator-Blaw Knox, Cedar Rapids, Jaeger, Caterpillar, Barbar Green; Scraper-self- propelled, hard tail end dump, articulating off-road equipment- under 45 yards; Subgrader trimmer; Tractors, backhoe over 75 hp; Transfer material service machine-shuttle buggy, Blaw Knox- Roadtec; Truck Crane oiler/driver-100 tons and over; Truck Mount Portable Conveyor; Yo Yo pay

GROUP 3 - Conveyors; Cranes through 19 tons with attachments; Crane-A-frame over 10 tons; Drill oilers-auger type, truck or crane mount; Dozer-D-9 and under; Forklift-3000 lbs. and over with attachments; Horizontal/directional drill locator; Outside Hoists-(elevators and manlifts), air tuggers, strato tower bucket elevators; Hydralifts/boom trucks over 10 tons; Loaders-elevating type, belt; Motor patrol grader-nonfinishing; Plant oiler- asphalt, crusher; Pump-Concrete; Roller, plant mix or multi-lfit materials; Saws-concrete; Scrapers, concrete and carry all; Service

engineers-equipment; Trenching machines; Truck crane  
oiler/driver under 100 tons; Tractors, backhoe under 75 hp

GROUP 4 - Assistant Engineer; Bobcat; Brooms; Compressor;  
Concrete Finish Machine-laser screed; Cranes A-frame 10  
tons and under; Elevator and manlift (permanent and shaft  
type); Forklifts-under 3000 lbs. with attachments;  
Gradechecker, stakehop; Hydralifts/boom trucks, 10 tons and  
under; Oil distributors, blower distribution and mulch  
seeding operator; Pavement breaker; Posthole  
digger-mechanical; Power plant; Pumps-water; Rigger and  
Bellman; Roller-other than plant mix; Wheel Tractors,  
farmall type; Shotcrete/gunite equipment operator

FOOTNOTE A- Reduced rates may be paid on the following:

1. Projects involving work on structures such as buildings  
and bridges whose total value is less than \$1.5 million  
excluding mechanical, electrical, and utility portions of  
the contract.
2. Projects of less than \$1 million where no building is  
involved. Surfacing and paving included, but utilities  
excluded.
3. Marine projects (docks, wharfs, etc.) less than \$150,000.

HANDLING OF HAZARDOUS WASTE MATERIALS: Personnel in all  
craft classifications subject to working inside a federally  
designated hazardous perimeter shall be eligible for  
compensation in accordance with the following group  
schedule relative to the level of hazardous waste as  
outlined in the specific hazardous waste project site  
safety plan.

H-1 Base wage rate when on a hazardous waste site when not  
outfitted with protective clothing, Class "D" Suit - Base  
wage rate plus \$ .50 per hour.

H-2 Class "C" Suit - Base wage rate plus \$1.00 per hour.

H-3 Class "B" Suit - Base wage rate plus \$1.50 per hour.

H-4 Class "A" Suit - Base wage rate plus \$2.00 per hour.

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 ENGI0612-012 06/01/2020

LEWIS, PACIFIC (portion lying north of a parallel line extending west from the northern boundary of Wahkaikum County to the sea) AND THURSTON COUNTIES

ON PROJECTS DESCRIBED IN FOOTNOTE A BELOW, THE RATE FOR EACH GROUP SHALL BE 90% OF THE BASE RATE PLUS FULL FRINGE BENEFITS. ON ALL OTHER WORK, THE FOLLOWING RATES APPLY.

Zone 1 (0-25 radius miles):

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1A.....	\$ 48.41	22.47
GROUP 1AA.....	\$ 49.13	22.47
GROUP 1AAA.....	\$ 49.83	22.47
GROUP 1.....	\$ 47.70	22.47
GROUP 2.....	\$ 47.08	22.47
GROUP 3.....	\$ 46.55	22.47
GROUP 4.....	\$ 43.54	22.47

Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) = \$1.00

Zone 3 (Over 45 radius miles) - \$1.30

BASEPOINTS: CENTRALIA, OLYMPIA, TACOMA

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 AAA - Cranes-over 300 tons or 300 ft of boom  
 (including jib with attachments)

GROUP 1AA - Cranes- 200 tons to 300 tons, or 250 ft of boom  
 (including jib with attachments; Tower crane over 175 ft in height, base to boom)

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom  
 (including jib with attachments); Crane-overhead, bridge type, 100 tons and over; Tower crane up to 175 ft in height base to boom; Loaders-overhead, 8 yards and over; Shovels, excavator, backhoes-6 yards and over with attachments

GROUP 1 - Cableway; Cranes 45 tons thru 99 tons under 150 ft of boom (including jib with attachments); Crane-overhead,

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

bridge type, 45 tons thru 99 tons; Derricks on building work; Excavator, shovel, backhoes over 3 yards and under 6 yards; Hard tail end dump articulating off-road equipment 45 yards and over; Loader- overhead, 6 yards to, but not including, 8 yards; Mucking machine, mole, tunnel, drill and/or shield; Quad 9 HD 41, D-10; Remote control operator on rubber tired earth moving equipment; Rollagon; Scrapers-self-propelled 45 yards and over; Slipform pavers; Transporters, all track or truck type

GROUP 2 - Barrier machine (zipper); Batch Plant Operator-concrete; Bump Cutter; Cranes, 20 tons thru 44 tons with attachments; Crane-Overhead, bridge type, 20 tons through 44 tons; Chipper; Concrete pump-truck mount with boom attachment; Crusher; Deck engineer/deck winches (power); Drilling machine; Excavator, shovel, backhoe-3 yards and under; Finishing machine, Bidwell, Gamaco and similar equipment; Guardrail punch; Loaders, overhead under 6 yards; Loaders-plant feed; Locomotives-all; Mechanics- all; Mixers, asphalt plant; Motor patrol graders, finishing; Piledriver (other than crane mount); Roto-mill, roto-grinder; Screedman, spreader, topside operator-Blaw Knox, Cedar Rapids, Jaeger, Caterpillar, Barbar Green; Scraper-self- propelled, hard tail end dump, articulating off-road equipment- under 45 yards; Subgrader trimmer; Tractors, backhoe over 75 hp; Transfer material service machine-shuttle buggy, Blaw Knox- Roadtec; Truck Crane oiler/driver-100 tons and over; Truck Mount Portable Conveyor; Yo Yo pay

GROUP 3 - Conveyors; Cranes through 19 tons with attachments; Crane-A-frame over 10 tons; Drill oilers-auger type, truck or crane mount; Dozer-D-9 and under; Forklift-3000 lbs. and over with attachments; Horizontal/directional drill locator; Outside Hoists-(elevators and manlifts), air tuggers, strato tower bucket elevators; Hydralifts/boom trucks over 10 tons; Loaders-elevating type, belt; Motor patrol grader-nonfinishing; Plant oiler- asphalt, crusher; Pump-Concrete; Roller, plant mix or multi-lift materials; Saws-concrete; Scrapers, concrete and carry all; Service engineers-equipment; Trenching machines; Truck crane oiler/driver under 100 tons; Tractors, backhoe under 75 hp

GROUP 4 - Assistant Engineer; Bobcat; Brooms; Compressor; Concrete Finish Machine-laser screed; Cranes A-frame 10 tons and under; Elevator and manlift (permanent and shaft type); Forklifts-under 3000 lbs. with attachments;

Gradechecker, stakehop; Hydralifts/boom trucks, 10 tons and under; Oil distributors, blower distribution and mulch seeding operator; Pavement breaker; Posthole digger-mechanical; Power plant; Pumps-water; Rigger and Bellman; Roller-other than plant mix; Wheel Tractors, farmall type; Shotcrete/gunite equipment operator

FOOTNOTE A- Reduced rates may be paid on the following:

1. Projects involving work on structures such as buildings and bridges whose total value is less than \$1.5 million excluding mechanical, electrical, and utility portions of the contract.
2. Projects of less than \$1 million where no building is involved. Surfacing and paving included, but utilities excluded.
3. Marine projects (docks, wharfs, etc.) less than \$150,000.

HANDLING OF HAZARDOUS WASTE MATERIALS: Personnel in all craft classifications subject to working inside a federally designated hazardous perimeter shall be eligible for compensation in accordance with the following group schedule relative to the level of hazardous waste as outlined in the specific hazardous waste project site safety plan.

H-1 Base wage rate when on a hazardous waste site when not outfitted with protective clothing, Class "D" Suit - Base wage rate plus \$ .50 per hour.

H-2 Class "C" Suit - Base wage rate plus \$1.00 per hour.

H-3 Class "B" Suit - Base wage rate plus \$1.50 per hour.

H-4 Class "A" Suit - Base wage rate plus \$2.00 per hour.

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 ENGI0701-002 01/01/2018

CLARK, COWLITZ, KLICKKITAT, PACIFIC (SOUTH), SKAMANIA, AND WAHAKIAKUM COUNTIES

POWER EQUIPMENT OPERATORS: ZONE 1

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1.....	\$ 41.65	14.35
GROUP 1A.....	\$ 43.73	14.35

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

GROUP 1B.....	\$ 45.82	14.35
GROUP 2.....	\$ 39.74	14.35
GROUP 3.....	\$ 38.59	14.35
GROUP 4.....	\$ 37.51	14.35
GROUP 5.....	\$ 36.27	14.35
GROUP 6.....	\$ 33.05	14.35

Zone Differential (add to Zone 1 rates):

Zone 2 - \$3.00

Zone 3 - \$6.00

For the following metropolitan counties: MULTNOMAH;  
CLACKAMAS; MARION; WASHINGTON; YAMHILL; AND COLUMBIA;  
CLARK; AND COWLITZ COUNTY, WASHINGTON WITH MODIFICATIONS AS  
INDICATED:

All jobs or projects located in Multnomah, Clackamas and Marion Counties, West of the western boundary of Mt. Hood National Forest and West of Mile Post 30 on Interstate 84 and West of Mile Post 30 on State Highway 26 and West of Mile Post 30 on Highway 22 and all jobs or projects located in Yamhill County, Washington County and Columbia County and all jobs or projects located in Clark & Cowlitz County, Washington except that portion of Cowlitz County in the Mt. St. Helens ""Blast Zone"" shall receive Zone I pay for all classifications.

All jobs or projects located in the area outside the identified boundary above, but less than 50 miles from the Portland City Hall shall receive Zone II pay for all classifications.

All jobs or projects located more than 50 miles from the Portland City Hall, but outside the identified border above, shall receive Zone III pay for all classifications.

For the following cities: ALBANY; BEND; COOS BAY; EUGENE;  
GRANTS PASS; KLAMATH FALLS; MEDFORD; ROSEBURG

All jobs or projects located within 30 miles of the respective city hall of the above mentioned cities shall receive Zone I pay for all classifications.

All jobs or projects located more than 30 miles and less than 50 miles from the respective city hall of the above mentioned cities shall receive Zone II pay for all classifications.

All jobs or projects located more than 50 miles from the respective city hall of the above mentioned cities shall receive Zone III pay for all classifications.

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

##### Group 1

Concrete Batch Plant and or Wet mix three (3) units or more; Crane, Floating one hundred and fifty (150) ton but less than two hundred and fifty (250) ton; Crane, two hundred (200) ton through two hundred ninety nine (299) ton with two hundred foot (200') boom or less (including jib, inserts and/or attachments); Crane, ninety (90) ton through one hundred ninety nine (199) ton with over two hundred (200') boom Including jib, inserts and/or attachments); Crane, Tower Crane with one hundred seventy five foot (175') tower or less and with less than two hundred foot (200') jib; Crane, Whirley ninety (90) ton and over; Helicopter when used in erecting work

##### Group 1A

Crane, floating two hundred fifty (250) ton and over; Crane, two hundred (200) ton through two hundred ninety nine (299) ton, with over two hundred foot (200') boom (including jib, inserts and/or attachments); Crane, three hundred (300) ton through three hundred ninety nine (399) ton; Crane, Tower Crane with over one hundred seventy five foot (175') tower or over two hundred foot (200') jib; Crane, tower Crane on rail system or 2nd tower or more in work radius

##### Group 1B

Crane, three hundred (300) ton through three hundred ninety nine (399) ton, with over two hundred foot (200') boom (including jib, inserts and/or attachments); Floating crane, three hundred fifty (350) ton and over; Crane, four hundred (400) ton and over

##### Group 2

Asphalt Plant (any type); Asphalt Roto-Mill, pavement profiler eight foot (8') lateral cut and over; Auto Grader or "Trimmer"; Blade, Robotic; Bulldozer, Robotic Equipment (any type); Bulldozer, over one hundred twenty thousand (120,000) lbs. and above; Concrete Batch Plant and/or Wet Mix one (1) and two (2) drum; Concrete Diamond Head

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

Profiler; Canal Trimmer; Concrete, Automatic Slip Form Paver (Assistant to the Operator required); Crane, Boom Truck fifty (50) ton and with over one hundred fifty foot (150') boom and over; Crane, Floating (derrick barge) thirty (30) ton but less than one hundred fifty (150) ton; Crane, Cableway twenty-five (25) ton and over; Crane, Floating Clamshell three (3) cu. Yds. And over; Crane, ninety (90) ton through one hundred ninety nine (199) ton up to and including two hundred foot (200') of boom (including jib inserts and/or attachments); Crane, fifty (50) ton through eighty nine (89) ton with over one hundred fifty foot (150') boom (including jib inserts and/or attachments); Crane, Whirley under ninety (90) ton; Crusher Plant; Excavator over one hundred thirty thousand (130,000) lbs.; Loader one hundred twenty thousand (120,000) lbs. and above; Remote Controlled Earth Moving Equipment; Shovel, Dragline, Clamshell, five (5) cu. Yds. And over; Underwater Equipment remote or otherwise, when used in construction work; Wheel Excavator any size

#### Group 3

Bulldozer, over seventy thousand (70,000) lbs. up to and including one hundred twenty thousand (120,000) lbs.; Crane, Boom Truck fifty (50) ton and over with less than one hundred fifty foot (150') boom; Crane, fifty (50) ton through eighty nine (89) ton with one hundred fifty foot (150') boom or less (including jib inserts and/or attachments); Crane, Shovel, Dragline or Clamshell three (3) cu. yds. but less than five (5) cu. Yds.; Excavator over eighty thousand (80,000) lbs. through one hundred thirty thousand (130,000) lbs.; Loader sixty thousand (60,000) lbs. and less than one hundred twenty thousand (120,000) lbs.

#### Group 4

Asphalt, Screed; Asphalt Paver; Asphalt Roto-Mill, pavement profiler, under eight foot (8') lateral cut; Asphalt, Material Transfer Vehicle Operator; Back Filling Machine; Backhoe, Robotic, track and wheel type up to and including twenty thousand (20,000) lbs. with any attachments; Blade (any type); Boatman; Boring Machine; Bulldozer over twenty thousand (20,000) lbs. and more than one hundred (100) horse up to seventy thousand (70,000) lbs.; Cable-Plow (any type); Cableway up to twenty five (25) ton; Cat Drill (John Henry); Chippers; Compactor, multi-engine; Compactor, Robotic; Compactor with blade self-propelled; Concrete,



Breaker; Concrete, Grout Plant; Concrete, Mixer Mobile; Concrete, Paving Road Mixer; Concrete, Reinforced Tank Banding Machine; Crane, Boom Truck twenty (20) ton and under fifty (50) ton; Crane, Bridge Locomotive, Gantry and Overhead; Crane, Carry Deck; Crane, Chicago Boom and similar types; Crane, Derrick Operator, under one hundred (100) ton; Crane, Floating Clamshell, Dragline, etc. Operator, under three (3) cu. yds. Or less than thirty (30) ton; Crane, under fifty (50) ton; Crane, Quick Tower under one hundred foot (100') in height and less than one hundred fifty foot (150') jib (on rail included); Diesel-Electric Engineer (Plant or Floating); Directional Drill over twenty thousand (20,000) lbs. pullback; Drill Cat Operator; Drill Doctor and/or Bit Grinder; Driller, Percussion, Diamond, Core, Cable, Rotary and similar type; Excavator Operator over twenty thousand (20,000) lbs. through eighty thousand (80,000) lbs.; Generator Operator; Grade-all; Guardrail Machines, i.e. punch, auger, etc.; Hammer Operator (Piledriver); Hoist, stiff leg, guy derrick or similar type, fifty (50) ton and over; Hoist, two (2) drums or more; Hydro Axe (loader mounted or similar type); Jack Operator, Elevating Barges, Barge Operator, self-unloading; Loader Operator, front end and overhead, twenty five thousand (25,000) lbs. and less than sixty thousand (60,000) lbs.; Log Skidders; Piledriver Operator (not crane type); Pipe, Bending, Cleaning, Doping and Wrapping Machines; Rail, Ballast Tamper Multi-Purpose; Rubber-tired Dozers and Pushers; Scraper, all types; Side-Boom; Skip Loader, Drag Box; Stump Grinder (loader mounted or similar type); Surface Heater and Planer; Tractor, rubber-tired, over fifty (50) HP Flywheel; Trenching Machine three foot (3') depth and deeper; Tub Grinder (used for wood debris); Tunnel Boring Machine Mechanic; Tunnel, Mucking Machine; Ultra High Pressure Water Jet Cutting Tool System Operator; Vacuum Blasting Machine Operator; Water pulls, Water wagons

#### Group 5

Asphalt, Extrusion Machine; Asphalt, Roller (any asphalt mix); Asphalt, Roto-Mill pavement profiler ground man; Bulldozer, twenty thousand (20,000) lbs. or less, or one hundred (100) horse or less; Cement Pump; Chip Spreading Machine; Churn Drill and Earth Boring Machine; Compactor, self-propelled without blade; Compressor, (any power) one thousand two hundred fifty (1,250) cu. ft. and over, total capacity; Concrete, Batch Plant Quality control; Concrete, Combination Mixer and compressor operator, gunite work;

#### General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

Concrete, Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete, Finishing Machine; Concrete, Grouting Machine; Concrete, Internal Full Slab Vibrator Operator; Concrete, Joint Machine; Concrete, Mixer single drum, any capacity; Concrete, Paving Machine eight foot (8') or less; Concrete, Planer; Concrete, Pump; Concrete, Pump Truck; Concrete, Pumpcrete Operator (any type); Concrete, Slip Form Pumps, power driven hydraulic lifting device for concrete forms; Conveyored Material Hauler; Crane, Boom Truck under twenty (20) tons; Crane, Boom Type lifting device, five (5) ton capacity or less; Drill, Directional type less than twenty thousand (20,000) lbs. pullback; Fork Lift, over ten (10) ton or Robotic; Helicopter Hoist; Hoist Operator, single drum; Hydraulic Backhoe track type up to and including twenty thousand (20,000) lbs.; Hydraulic Backhoe wheel type (any make); Laser Screed; Loaders, rubber-tired type, less than twenty five thousand (25,000) lbs.; Pavement Grinder and/or Grooving Machine (riding type); Pipe, cast in place Pipe Laying Machine; Pulva-Mixer or similar types; Pump Operator, more than five (5) pumps (any size); Rail, Ballast Compactor, Regulator, or Tamper machines; Service Oiler (Greaser); Sweeper Self-Propelled; Tractor, Rubber-Tired, fifty (50) HP flywheel and under; Trenching Machine Operator, maximum digging capacity three foot (3') depth; Tunnel, Locomotive, Dinkey; Tunnel, Power Jumbo setting slip forms, etc.

#### Group 6

Asphalt, Pugmill (any type); Asphalt, Raker; Asphalt, Truck Mounted Asphalt Spreader, with Screed; Auger Oiler; Boatman; Bobcat, skid steer (less than one (1) yard); Broom, self-propelled; Compressor Operator (any power) under 1,250 cu. ft. total capacity; Concrete Curing Machine (riding type); Concrete Saw; Conveyor Operator or Assistant; Crane, Tugger; Crusher Feeder; Crusher Oiler; Deckhand; Drill, Directional Locator; Fork Lift; Grade Checker; Guardrail Punch Oiler; Hydrographic Seeder Machine, straw, pulp or seed; Hydrostatic Pump Operator; Mixer Box (CTB, dry batch, etc.); Oiler; Plant Oiler; Pump (any power); Rail, Brakeman, Switchman, Motorman; Rail, Tamping Machine, mechanical, self-propelled; Rigger; Roller grading (not asphalt); Truck, Crane Oiler-Driver

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IRON0014-005 07/04/2022

ADAMS, ASOTIN, BENTON, COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD,  
GRANT, LINCOLN, OKANOGAN, PEND ORIELLE, SPOKANE, STEVENS, WALLA WALLA  
AND WHITMAN COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 36.21	31.47
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IRON0029-002 07/01/2020		

CLARK, COWLITZ, KLINKITAT, PACIFIC, SKAMANIA, AND WAHKAUKUM COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 39.10	29.75
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IRON0086-002 07/04/2022		

YAKIMA, KITTITAS AND CHELAN COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 36.21	31.47
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IRON0086-004 07/04/2022		

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON,  
PIERCE, SKAGIT, SNOHOMISH, THURSTON, AND WHATCOM COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 49.90	31.82
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LABO0238-004 06/01/2021		

PASCO AREA: ADAMS, BENTON, COLUMBIA, DOUGLAS (East of 120<sup>th</sup> Meridian),  
FERRY, FRANKLIN, GRANT, OKANOGAN, WALLA WALLA

SPOKANE AREA: ASOTIN, GARFIELD, LINCOLN, PEND OREILLE, SPOKANE,  
STEVENS & WHITMAN COUNTIES

	Rates	Fringes
LABORER (PASCO)		
GROUP 1.....	\$ 26.69	13.65
GROUP 2.....	\$ 28.79	13.65

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

GROUP 3.....	\$ 29.06	13.65
GROUP 4.....	\$ 29.33	13.65
GROUP 5.....	\$ 29.61	13.65
LABORER (SPOKANE)		
GROUP 1.....	\$ 27.34	15.35
GROUP 2.....	\$ 29.44	15.35
GROUP 3.....	\$ 29.71	15.35
GROUP 4.....	\$ 29.98	15.35
GROUP 5.....	\$ 30.26	15.35

Zone Differential (Add to Zone 1 rate): \$2.00

BASE POINTS: Spokane, Pasco, Lewiston

Zone 1: 0-45 radius miles from the main post office.

Zone 2: 45 radius miles and over from the main post office.

#### LABORERS CLASSIFICATIONS

GROUP 1: Flagman; Landscape Laborer; Scaleman; Traffic Control Maintenance Laborer (to include erection and maintenance of barricades, signs and relief of flagperson); Window Washer/Cleaner (detail cleanup, such as, but not limited to cleaning floors, ceilings, walls, windows, etc. prior to final acceptance by the owner)

GROUP 2: Asbestos Abatement Worker; Brush Hog Feeder; Carpenter Tender; Cement Handler; Clean-up Laborer; Concrete Crewman (to include stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, signaling, handling the nozzle of squeezecrete or similar machine, 6 inches and smaller); Confined Space Attendant; Concrete Signalman; Crusher Feeder; Demolition (to include clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector; Firewatch; Form Cleaning Machine Feeder, Stacker; General Laborer; Grout Machine Header Tender; Guard Rail (to include guard rails, guide and reference posts, sign posts, and right-of-way markers); Hazardous Waste Worker, Level D (no respirator is used and skin protection is minimal); Miner, Class "A" (to include all bull gang, concrete crewman, dumpman and pumpcrete crewman, including distributing pipe, assembly & dismantle, and nipper); Nipper; Riprap Man; Sandblast Tailhoesman; Scaffold Erector (wood or steel); Stake Jumper; Structural Mover (to include separating foundation, preparation,

cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Buckler and Faller (by hand); Track Laborer (RR); Truck Loader; Well-Point Man; All Other Work Classifications Not Specially Listed Shall Be Classified As General Laborer

GROUP 3: Asphalt Roller, walking; Cement Finisher Tender; Concrete Saw, walking; Demolition Torch; Dope Pot Firemen, non-mechanical; Driller Tender (when required to move and position machine); Form Setter, Paving; Grade Checker using level; Hazardous Waste Worker, Level C (uses a chemical "splash suit" and air purifying respirator); Jackhammer Operator; Miner, Class "B" (to include brakeman, finisher, vibrator, form setter); Nozzlemaster (to include squeeze and flo-crete nozzle); Nozzlemaster, water, air or steam; Pavement Breaker (under 90 lbs.); Pipelayer, corrugated metal culvert; Pipelayer, multi-plate; Pot Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Railroad Equipment, power driven, except dual mobile power spiker or puller; Railroad Power Spiker or Puller, dual mobile; Rodder and Spreader; Tamper (to include operation of Barco, Essex and similar tampers); Trencher, Shawnee; Tugger Operator; Wagon Drills; Water Pipe Liner; Wheelbarrow (power driven)

GROUP 4: Air and Hydraulic Track Drill; Asphalt Raker; Brush Machine (to include horizontal construction joint cleanup brush machine, power propelled); Caisson Worker, free air; Chain Saw Operator and Faller; Concrete Stack (to include laborers when laborers working on free standing concrete stacks for smoke or fume control above 40 feet high); Guniting (to include operation of machine and nozzle); Hazardous Waste Worker, Level B (uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Laser Beam Operator (to include grade checker and elevation control); Miner, Class C (to include miner, nozzlemaster for concrete, laser beam operator and rigger on tunnels); Monitor Operator (air track or similar mounting); Mortar Mixer; Nozzlemaster (to include jet blasting nozzlemaster, over 1,200 lbs., jet blast machine power propelled, sandblast nozzle); Pavement Breaker (90 lbs. and over); Pipelayer (to include working topman, caulker, collarman, jointer, mortarman, rigger, jacker, shorer, valve or meter installer); Pipewrapper; Plasterer Tender; Vibrators (all)

GROUP 5 - Drills with Dual Masts; Hazardous Waste Worker,

Level A (utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line); Miner Class "D", (to include raise and shaft miner, laser beam operator on raises and shafts)

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LABO0238-006 06/01/2021

COUNTIES EAST OF THE 120TH MERIDIAN: ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD, GRANT, LINCOLN, OKANOGAN, PEND OREILLE, STEVENS, SPOKANE, WALLA WALLA, WHITMAN

	Rates	Fringes
Hod Carrier.....	\$ 30.00	13.50

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LABO0242-003 06/01/2022

KING COUNTY

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 29.82	13.80
GROUP 2A.....	\$ 34.20	13.80
GROUP 3.....	\$ 42.86	13.80
GROUP 4.....	\$ 43.90	13.80
GROUP 5.....	\$ 44.62	13.80
Group 6.....	\$ 45.91	13.90

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT, TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT. TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective city hall  
 ZONE 2 - More than 25 but less than 45 radius miles from the respective city hall  
 ZONE 3 - More than 45 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):  
 ZONE 2 - \$1.00  
 ZONE 3 - \$1.30

BASE POINTS: CHELAN, SUNNYSIDE, WENATCHEE, AND YAKIMA

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

ZONE 1 - Projects within 25 radius miles of the respective city hall

ZONE 2 - More than 25 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):

ZONE 2 - \$2.25

#### LABORERS CLASSIFICATIONS

GROUP 1: Landscaping and Planting; Watchman; Window Washer/Cleaner (detail clean-up, such as but not limited to cleaning floors, ceilings, walls, windows, etc., prior to final acceptance by the owner)

GROUP 2A: Batch Weighman; Crusher Feeder; Fence Laborer; Flagman; Pilot Car

GROUP 3: General Laborer; Air, Gas, or Electric Vibrating Screed; Asbestos Abatement Laborer; Ballast Regulator Machine; Brush Cutter; Brush Hog Feeder; Burner; Carpenter Tender; Cement Finisher Tender; Change House or Dry Shack; Chipping Gun (under 30 lbs.); Choker Setter; Chuck Tender; Clean-up Laborer; Concrete Form Stripper; Curing Laborer; Demolition (wrecking and moving including charred material); Ditch Digger; Dump Person; Fine Graders; Firewatch; Form Setter; Gabian Basket Builders; Grout Machine Tender; Grinders; Guardrail Erector; Hazardous Waste Worker (Level C: uses a chemical "splash suit" and air purifying respirator); Maintenance Person; Material Yard Person; Pot Tender; Rip Rap Person; Riggers; Scale Person; Sloper Sprayer; Signal Person; Stock Piler; Stake Hopper; Toolroom Man (at job site); Topper-Tailer; Track Laborer; Truck Spotter; Vinyl Seamer

GROUP 4: Cement Dumper-Paving; Chipping Gun (over 30 lbs.); Clary Power Spreader; Concrete Dumper/Chute Operator; Concrete Saw Operator; Drill Operator (hydraulic, diamond, airtrac); Faller and Bucker Chain Saw; Grade Checker and Transit Person; Groutmen (pressure) including post tension beams; Hazardous Waste Worker (Level B: uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Jackhammer; Laserbeam Operator; Manhole Builder-Mudman; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on

concrete and rock, sandblast, gunite, shotcrete, water blaster, vacuum blaster); Pavement Breaker; Pipe Layer and Caulker; Pipe Pot Tender; Pipe Reliner (not insert type); Pipe Wrapper; Power Jacks; Railroad Spike Puller-Power; Raker-Asphalt; Rivet Buster; Rodder; Sloper (over 20 ft); Spreader (concrete); Tamper and Similar electric, air and gas operated tool; Timber Person-sewer (lagger shorer and cribber); Track Liner Power; Tugger Operator; Vibrator; Well Point Laborer

GROUP 5: Caisson Worker; Mortarman and Hodcarrier; Powderman; Re-Timberman; Hazardous Waste Worker (Level A: utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line).

Group 6: Miner

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LABO0252-010 06/01/2022

CLALLAM, GRAYS HARBOR, JEFFERSON, KITSAP, LEWIS, MASON, PACIFIC (EXCLUDING SOUTHWEST), PIERCE, AND THURSTON COUNTIES

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 29.82	13.80
GROUP 2.....	\$ 34.20	13.80
GROUP 3.....	\$ 42.86	13.80
GROUP 4.....	\$ 43.90	13.80
GROUP 5.....	\$ 44.62	13.80

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT, TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT. TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective city hall  
 ZONE 2 - More than 25 but less than 45 radius miles from the respective city hall  
 ZONE 3 - More than 45 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):  
 ZONE 2 - \$1.00  
 ZONE 3 - \$1.30

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



BASE POINTS: CHELAN, SUNNYSIDE, WENATCHEE, AND YAKIMA

ZONE 1 - Projects within 25 radius miles of the respective city hall

ZONE 2 - More than 25 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):

ZONE 2 - \$2.25

#### LABORERS CLASSIFICATIONS

GROUP 1: Landscaping and Planting; Watchman; Window Washer/Cleaner (detail clean-up, such as but not limited to cleaning floors, ceilings, walls, windows, etc., prior to final acceptance by the owner)

GROUP 2: Batch Weighman; Crusher Feeder; Fence Laborer; Flagman; Pilot Car

GROUP 3: General Laborer; Air, Gas, or Electric Vibrating Screed; Asbestos Abatement Laborer; Ballast Regulator Machine; Brush Cutter; Brush Hog Feeder; Burner; Carpenter Tender; Cement Finisher Tender; Change House or Dry Shack; Chipping Gun (under 30 lbs.); Choker Setter; Chuck Tender; Clean-up Laborer; Concrete Form Stripper; Curing Laborer; Demolition (wrecking and moving including charred material); Ditch Digger; Dump Person; Fine Graders; Firewatch; Form Setter; Gabian Basket Builders; Grout Machine Tender; Grinders; Guardrail Erector; Hazardous Waste Worker (Level C: uses a chemical "splash suit" and air purifying respirator); Maintenance Person; Material Yard Person; Pot Tender; Rip Rap Person; Riggers; Scale Person; Sloper Sprayer; Signal Person; Stock Piler; Stake Hopper; Toolroom Man (at job site); Topper-Tailer; Track Laborer; Truck Spotter; Vinyl Seamer

GROUP 4: Cement Dumper-Paving; Chipping Gun (over 30 lbs.); Clary Power Spreader; Concrete Dumper/Chute Operator; Concrete Saw Operator; Drill Operator (hydraulic, diamond, airtrac); Faller and Bucker Chain Saw; Groutmen (pressure) including post tension beams; Hazardous Waste Worker (Level B: uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); Jackhammer; Laserbeam Operator; Manhole Builder-Mudman; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

concrete and rock, sandblast, gunite, shotcrete, water blaster, vacuum blaster); Pavement Breaker; Pipe Layer and Caulker; Pipe Pot Tender; Pipe Reliner (not insert type); Pipe Wrapper; Power Jacks; Railroad Spike Puller-Power; Raker-Asphalt; Rivet Buster; Rodder; Sloper (over 20 ft); Spreader (concrete); Tamper and Similar electric, air and gas operated tool; Timber Person-sewer (lagger shorer and cribber); Track Liner Power; Tugger Operator; Vibrator; Well Point Laborer

GROUP 5: Caisson Worker; Miner; Mortarman and Hodcarrier; Grade Checker and Transit Person; High Scaler; Powderman; Re-Timberman; Hazardous Waste Worker (Level A: utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line).

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LABO0292-008 06/01/2022

ISLAND, SAN JUAN, SKAGIT, SNOHOMISH, AND WHATCOM COUNTIES

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 29.82	13.80
GROUP 2.....	\$ 34.20	13.80
GROUP 3.....	\$ 42.86	13.80
GROUP 4.....	\$ 43.90	13.80
GROUP 5.....	\$ 44.62	13.80

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT, TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT. TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective city hall  
 ZONE 2 - More than 25 but less than 45 radius miles from the respective city hall  
 ZONE 3 - More than 45 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):  
 ZONE 2 - \$1.00  
 ZONE 3 - \$1.30

BASE POINTS: CHELAN, SUNNYSIDE, WENATCHEE, AND YAKIMA

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

ZONE 1 - Projects within 25 radius miles of the respective city hall

ZONE 2 - More than 25 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):

ZONE 2 - \$2.25

#### LABORERS CLASSIFICATIONS

GROUP 1: Landscaping and Planting; Watchman; Window Washer/Cleaner (detail clean-up, such as but not limited to cleaning floors, ceilings, walls, windows, etc., prior to final acceptance by the owner)

GROUP 2: Batch Weighman; Crusher Feeder; Fence Laborer; Flagman; Pilot Car

GROUP 3: General Laborer; Air, Gas, or Electric Vibrating Screed; Asbestos Abatement Laborer; Ballast Regulator Machine; Brush Cutter; Brush Hog Feeder; Burner; Carpenter Tender; Cement Finisher Tender; Change House or Dry Shack; Chipping Gun (under 30 lbs.); Choker Setter; Chuck Tender; Clean-up Laborer; Concrete Form Stripper; Curing Laborer; Demolition (wrecking and moving including charred material); Ditch Digger; Dump Person; Fine Graders; Firewatch; Form Setter; Gabian Basket Builders; Grout Machine Tender; Grinders; Guardrail Erector; Hazardous Waste Worker (Level C: uses a chemical "splash suit" and air purifying respirator); Maintenance Person; Material Yard Person; Pot Tender; Rip Rap Person; Riggers; Scale Person; Sloper Sprayer; Signal Person; Stock Piler; Stake Hopper; Toolroom Man (at job site); Topper-Tailer; Track Laborer; Truck Spotter; Vinyl Seamer

GROUP 4: Cement Dumper-Paving; Chipping Gun (over 30 lbs.); Clary Power Spreader; Concrete Dumper/Chute Operator; Concrete Saw Operator; Drill Operator (hydraulic, diamond, airtrac); Faller and Bucker Chain Saw; Grade Checker and Transit Person; Groutmen (pressure) including post tension beams; Hazardous Waste Worker (Level B: uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Jackhammer; Laserbeam Operator; Manhole Builder-Mudman; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on concrete and rock, sandblast, gunite, shotcrete, water

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

blaster, vacuum blaster); Pavement Breaker; Pipe Layer and Caulker; Pipe Pot Tender; Pipe Reliner (not insert type); Pipe Wrapper; Power Jacks; Railroad Spike Puller-Power; Raker-Asphalt; Rivet Buster; Rodder; Sloper (over 20 ft); Spreader (concrete); Tamper and Similar electric, air and glass operated tool; Timber Person-sewer (lagger shorer and cribber); Track Liner Power; Tugger Operator; Vibrator; Well Point Laborer

GROUP 5: Caisson Worker; Miner; Mortarman and Hodcarrier; Powderman; Re-Timberman; Hazardous Waste Worker (Level A: utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line).

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LABO0335-001 06/01/2022

CLARK, COWLITZ, KLUCKITAT, PACIFIC (SOUTH OF A STRAIGHT LINE MADE BY EXTENDING THE NORTH BOUNDARY LINE OF WAHAKIYAKUM COUNTY WEST TO THE PACIFIC OCEAN), SKAMANIA AND WAHAKIYAKUM COUNTIES

	Rates	Fringes
Laborers:		
ZONE 1:		
GROUP 1.....	\$ 37.98	13.80
GROUP 2.....	\$ 38.76	13.80
GROUP 3.....	\$ 39.35	13.80
GROUP 4.....	\$ 39.85	13.80
GROUP 5.....	\$ 34.75	13.80
GROUP 6.....	\$ 31.61	13.80
GROUP 7.....	\$ 27.44	13.80

Zone Differential (Add to Zone 1 rates):

Zone 2 \$ 0.65

Zone 3 - 1.15

Zone 4 - 1.70

Zone 5 - 2.75

BASE POINTS: LONGVIEW AND VANCOUVER

ZONE 1: Projects within 30 miles of the respective city all.

ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.

ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.

ZONE 5: More than 80 miles from the respective city hall.

#### LABORERS CLASSIFICATIONS

GROUP 1: Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Change-House Man or Dry Shack Man; Choker Setter; Clean-up Laborers; Curing, Concrete; Demolition, Wrecking and Moving Laborers; Dumpers, road oiling crew; Dumpmen (for grading crew); Elevator Feeders; Median Rail Reference Post, Guide Post, Right of Way Marker; Fine Graders; Fire Watch; Form Strippers (not swinging stages); General Laborers; Hazardous Waste Worker; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Pittsburgh Chipper Operator or Similar Types; Railroad Track Laborers; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpiler; Tie Back Shoring; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bullgang (above ground); Weight-Man- Crusher (aggregate when used)

GROUP 2: Applicator (including pot power tender for same), applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary Power Spreader and similar types; Clean- up Nozzleman-Green Cutter (concrete, rock, etc.); Concrete Power Buggyman; Concrete Laborer; Crusher Feeder; Demolition and Wrecking Charred Materials; Gunitite Nozzleman Tender; Gunitite or Sand Blasting Pot Tender; Handlers or Mixers of all Materials of an irritating nature (including cement and lime); Tool Operators (includes but not limited to: Dry Pack Machine; Jackhammer; Chipping Guns; Paving Breakers); Pipe Doping and Wrapping; Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Sand Blasting (Wet); Stake-Setter; Tunnel-Muckers, Brakemen, Concrete Crew, Bullgang (underground)

GROUP 3: Asbestos Removal; Bit Grinder; Drill Doctor; Drill Operators, air tracks, cat drills, wagon drills, rubber-mounted drills, and other similar types including at

crusher plants; Guniting Nozzelman; High Scalers, Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping); Manhole Builder; Powdermen; Concrete Saw Operator; Powdermen; Power Saw Operators (Bucking and Falling); Pumpcrete Nozzlemen; Sand Blasting (Dry); Sewer Timberman; Track Liners, Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks, Tugger Operator; Tunnel-Chuck Tenders, Nippers and Timberman; Vibrator; Water Blaster

GROUP 4: Asphalt Raker; Concrete Saw Operator (walls); Concrete Nozzelman; Grade Checker; Pipelayer; Laser Beam (pipelaying)-applicable when employee assigned to move, set up, align; Laser Beam; Tunnel Miners; Motorman-Dinky Locomotive-Tunnel; Powderman-Tunnel; Shield Operator-Tunnel

GROUP 5: Traffic Flaggers

GROUP 6: Fence Builders

GROUP 7: Landscaping or Planting Laborers

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LABO0335-019 06/01/2022

	Rates	Fringes
Hod Carrier.....	\$ 37.98	13.80

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LABO0348-003 06/01/2022

CHELAN, DOUGLAS (W OF 12TH MERIDIAN), KITTITAS, AND YAKIMA COUNTIES

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 25.37	13.80
GROUP 2.....	\$ 29.16	13.80
GROUP 3.....	\$ 31.94	13.80
GROUP 4.....	\$ 32.72	13.80
GROUP 5.....	\$ 32.09	13.19

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT, TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT.

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective city hall

ZONE 2 - More than 25 but less than 45 radius miles from the respective city hall

ZONE 3 - More than 45 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):

ZONE 2 - \$1.00

ZONE 3 - \$1.30

BASE POINTS: CHELAN, SUNNYSIDE, WENATCHEE, AND YAKIMA

ZONE 1 - Projects within 25 radius miles of the respective city hall

ZONE 2 - More than 25 radius miles from the respective city hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):

ZONE 2 - \$2.25

LABORERS CLASSIFICATIONS

GROUP 1: Landscaping and Planting; Watchman; Window Washer/Cleaner (detail clean-up, such as but not limited to cleaning floors, ceilings, walls, windows, etc., prior to final acceptance by the owner)

GROUP 2: Batch Weighman; Crusher Feeder; Fence Laborer; Flagman; Pilot Car

GROUP 3: General Laborer; Air, Gas, or Electric Vibrating Screed; Asbestos Abatement Laborer; Ballast Regulator Machine; Brush Cutter; Brush Hog Feeder; Burner; Carpenter Tender; Cement Finisher Tender; Change House or Dry Shack; Chipping Gun (under 30 lbs.); Choker Setter; Chuck Tender; Clean-up Laborer; Concrete Form Stripper; Curing Laborer; Demolition (wrecking and moving including charred material); Ditch Digger; Dump Person; Fine Graders; Firewatch; Form Setter; Gabian Basket Builders; Grout Machine Tender; Grinders; Guardrail Erector; Hazardous Waste Worker (Level C: uses a chemical "splash suit" and air purifying respirator); Maintenance Person; Material Yard Person; Pot Tender; Rip Rap Person; Riggers; Scale Person; Sloper Sprayer; Signal Person; Stock Piler; Stake

Hopper; Toolroom Man (at job site); Topper-Tailer; Track Laborer; Truck Spotter; Vinyl Seamer

GROUP 4: Cement Dumper-Paving; Chipping Gun (over 30 lbs.); Clary Power Spreader; Concrete Dumper/Chute Operator; Concrete Saw Operator; Drill Operator (hydraulic, diamond, aiartrac); Faller and Bucker Chain Saw; Grade Checker and Transit Person; Groutmen (pressure) including post tension beams; Hazardous Waste Worker (Level B: uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Jackhammer; Laserbeam Operator; Manhole Builder-Mudman; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on concrete and rock, sandblast, gunite, shotcrete, water blaster, vacuum blaster); Pavement Breaker; Pipe Layer and Caulker; Pipe Pot Tender; Pipe Reliner (not insert type); Pipe Wrapper; Power Jacks; Railroad Spike Puller-Power; Raker-Asphalt; Rivet Buster; Rodder; Sloper (over 20 ft); Spreader (concrete); Tamper and Similar electric, air and glas operated tool; Timber Person-sewer (lagger shorer and cribber); Track Liner Power; Tugger Operator; Vibrator; Well Point Laborer

GROUP 5: Caisson Worker; Miner; Mortarman and Hodcarrier; Powderman; Re-Timberman; Hazardous Waste Worker (Level A: utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line).

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PAIN0005-002 07/01/2022

STATEWIDE EXCEPT CLARK, COWLITZ, KLUCKITAT, PACIFIC (SOUTH), SKAMANIA, AND WAHKIAKUM COUNTIES

	Rates	Fringes
Painters:		
STRIPERS.....	\$ 33.37	18.53

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PAIN0005-004 03/01/2009

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM COUNTIES

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



D-41

	Rates	Fringes
PAINTER.....	\$ 20.82	7.44
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\* PAIN0005-006 07/01/2018

ADAMS, ASOTIN; BENTON AND FRANKLIN (EXCEPT HANFORD SITE); CHELAN, COLUMBIA, DOUGLAS, FERRY, GARFIELD, GRANT, KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN AND YAKIMA COUNTIES

	Rates	Fringes
PAINTER		
Application of Cold Tar Products, Epoxies, Polyurethanes, Acids, Radiation Resistant Material, Water and Sandblasting.....	\$ 30.19	11.71
Over 30'/Swing Stage Work..	\$ 22.20	7.98
Brush, Roller, Striping, Steam-cleaning and Spray....	\$ 22.94	11.61
Lead Abatement, Asbestos Abatement.....	\$ 21.50	7.98

\*\$.70 shall be paid over and above the basic wage rates listed for work on swing stages and high work of over 30 feet.

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PAIN0055-003 07/01/2020

CLARK, COWLITZ, KLINKITAT, PACIFIC, SKAMANIA, AND WAHIAKUM COUNTIES

	Rates	Fringes
PAINTER		
Brush & Roller.....	\$ 26.56	13.40
Spray and Sandblasting.....	\$ 26.56	13.40

All high work over 60 ft. = base rate + \$0.75

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PAIN0055-006 01/01/2022

CLARK, COWLITZ, KLINKITAT, SKAMANIA and WAHIAKUM COUNTIES

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

	Rates	Fringes
Painters:		
HIGHWAY & PARKING LOT		
STRIPER.....	\$ 48.17	16.00
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PLAS0072-004 06/01/2020		

ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN,  
GARFIELD, GRANT, KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE,  
STEVENS, WALLA WALLA, WHITMAN, AND YAKIMA COUNTIES

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
ZONE 1.....	\$ 31.30	15.53

Zone Differential (Add to Zone 1 rate): Zone 2 - \$2.00

BASE POINTS: Spokane, Pasco, Lewiston; Wenatchee  
Zone 1: 0 - 45 radius miles from the main post office  
Zone 2: Over 45 radius miles from the main post office

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PLAS0528-001 06/01/2022		
CLALLAM, COWLITZ, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON, WAHIAKUM AND WHATCOM COUNTIES		

	Rates	Fringes
CEMENT MASON		
CEMENT MASON.....	\$ 50.00	19.59
COMPOSITION, TROWEL MACHINE, GRINDER, POWER TOOLS, GUNNITE NOZZLE.....	\$ 50.50	19.59
TROWELING MACHINE OPERATOR ON COMPOSITION.....	\$ 50.50	19.59
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PLAS0555-002 07/01/2019

CLARK, KLINKITAT AND SKAMANIA COUNTIES

ZONE 1:

	Rates	Fringes
CEMENT MASON		
CEMENT MASONS DOING BOTH		
COMPOSITION/POWER		
MACHINERY AND		
SUSPENDED/HANGING SCAFFOLD..\$ 37.32		18.77
CEMENT MASONS ON		
SUSPENDED, SWINGING AND/OR		
HANGING SCAFFOLD.....\$ 36.58		18.77
CEMENT MASONS.....\$ 35.85		18.77
COMPOSITION WORKERS AND		
POWER MACHINERY OPERATORS...\$ 36.58		18.77

Zone Differential (Add To Zone 1 Rates):

Zone 2 - \$0.65

Zone 3 - 1.15

Zone 4 - 1.70

Zone 5 - 3.00

BASE POINTS: BEND, CORVALLIS, EUGENE, MEDFORD, PORTLAND,  
SALEM, THE DALLES, VANCOUVER

ZONE 1: Projects within 30 miles of the respective city hall

ZONE 2: More than 30 miles but less than 40 miles from the  
respective city hall.ZONE 3: More than 40 miles but less than 50 miles from the  
respective city hall.ZONE 4: More than 50 miles but less than 80 miles from the  
respective city hall.

ZONE 5: More than 80 miles from the respective city hall

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TEAM0037-002 06/01/2020

CLARK, COWLITZ, KLINKITAT, PACIFIC (South of a straight line  
made by extending the north boundary line of Wahkiakum County  
west to the Pacific Ocean), SKAMANIA, AND WAHIAKUM COUNTIES

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

	Rates	Fringes
Truck drivers:		
ZONE 1		
GROUP 1.....	\$ 29.33	16.40
GROUP 2.....	\$ 29.46	16.40
GROUP 3.....	\$ 29.60	16.40
GROUP 4.....	\$ 29.89	16.40
GROUP 5.....	\$ 30.03	16.40
GROUP 6.....	\$ 30.31	16.40
GROUP 7.....	\$ 30.53	16.40

Zone Differential (Add to Zone 1 Rates):

Zone 2 - \$0.65

Zone 3 - 1.15

Zone 4 - 1.70

Zone 5 - 2.75

BASE POINTS: ASTORIA, THE DALLES, LONGVIEW AND VANCOUVER

ZONE 1: Projects within 30 miles of the respective city hall.

ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.

ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.

ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.

ZONE 5: More than 80 miles from the respective city hall.

#### TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: A Frame or Hydra lift truck w/load bearing surface; Articulated Dump Truck; Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Concrete Pump Truck; Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: up to and including 10 cu. yds.; Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Pickup Truck; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Water Wagons (rated capacity) up to 3,000 gallons; Transit Mix and Wet or Dry Mix - 5 cu. yds.

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

and under; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Driver; Slurry Truck Driver or Leverman; Tireman

GROUP 2: Boom Truck/Hydra-lift or Retracting Crane; Challenger; Dumpsters or similar equipment all sizes; Dump Trucks/Articulated Dumps 6 cu to 10 cu.; Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer or doubles transporting equipment or wet or dry materials; Lumber Carrier, Driver-Straddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Transit mix and wet or dry mix trucks: over 5 cu. yds. and including 7 cu. yds.; Vacuum Trucks; Water truck/Wagons (rated capacity) over 3,000 to 5,000 gallons

GROUP 3: Ammonia Nitrate Distributor Driver; Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 30 cu. yds. includes Articulated Dump Trucks; Self-Propelled Street Sweeper; Transit mix and wet or dry mix truck: over 7 cu yds. and including 11 cu yds.; Truck Mechanic-Welder-Body Repairman; Utility and Clean-up Truck; Water Wagons (rated capacity) over 5,000 to 10,000 gallons

GROUP 4: Asphalt Burner; Dump Trucks, side, end and bottom dumps, including Semi-Trucks and Trains or combinations thereof: over 30 cu. yds. and including 50 cu. yds. includes Articulated Dump Trucks; Fire Guard; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

GROUP 5: Composite Crewman; Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds. includes Articulated Dump Trucks

GROUP 6: Bulk Cement Spreader w/o Auger; Dry Pre-Batch concrete Mix Trucks; Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof: over 60 cu. yds. and including 80 cu. yds., and includes Articulated Dump Trucks; Skid Truck

GROUP 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 100 cu. yds., includes Articulated Dump

Trucks; Industrial Lift Truck (mechanical tailgate)

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 \* TEAM0174-001 06/01/2020

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC (North of a straight line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean), PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM COUNTIES

	Rates	Fringes
--	-------	---------

Truck drivers:

ZONE A:

GROUP 1:.....	\$ 42.88	20.92
GROUP 2:.....	\$ 42.04	20.92
GROUP 3:.....	\$ 39.23	20.92
GROUP 4:.....	\$ 34.26	20.92
GROUP 5:.....	\$ 42.43	20.92

ZONE B (25-45 miles from center of listed cities\*): Add \$.70 per hour to Zone A rates.

ZONE C (over 45 miles from center of listed cities\*): Add \$1.00 per hour to Zone A rates.

\*Zone pay will be calculated from the city center of the following listed cities:

BELLINGHAM	CENTRALIA	RAYMOND	OLYMPIA
EVERETT	SHELTON	ANACORTES	BELLEVUE
SEATTLE	PORT ANGELES	MT. VERNON	KENT
TACOMA	PORT TOWNSEND	ABERDEEN	BREMERTON

#### TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - "A-frame or Hydralift" trucks and Boom trucks or similar equipment when "A" frame or "Hydralift" and Boom truck or similar equipment is used; Buggymobile; Bulk Cement Tanker; Dumpsters and similar equipment, Tournorockers, Tournowagon, Tournotrailer, Cat DW series, Terra Cobra, Le Tourneau, Westinghouse, Athye Wagon, Euclid Two and Four-Wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks, side, end and bottom dump, including semi-trucks and trains or combinations thereof with 16 yards to 30 yards capacity: Over 30 yards \$.15 per hour additional for each 10 yard increment; Explosive Truck (field mix) and similar

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

equipment; Hyster Operators (handling bulk loose aggregates); Lowbed and Heavy Duty Trailer; Road Oil Distributor Driver; Spreader, Flaherty Transit mix used exclusively in heavy construction; Water Wagon and Tank Truck-3,000 gallons and over capacity

GROUP 2 - Bull lifts, or similar equipment used in loading or unloading trucks, transporting materials on job site; Dumpsters, and similar equipment, Tournorockers, Tournowagon, Turnotrailer, Cat. D.W. Series, Terra Cobra, Le Tourneau, Westinghouse, Athye wagon, Euclid two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump trucks, side, end and bottom dump, including semi-trucks and trains or combinations thereof with less than 16 yards capacity; Flatbed (Dual Rear Axle); Grease Truck, Fuel Truck, Greaser, Battery Service Man and/or Tire Service Man; Leverman and loader at bunkers and batch plants; Oil tank transport; Scissor truck; Slurry Truck; Sno-Go and similar equipment; Swampers; Straddler Carrier (Ross, Hyster) and similar equipment; Team Driver; Tractor (small, rubber-tired) (when used within Teamster jurisdiction); Vacuum truck; Water Wagon and Tank trucks-less than 3,000 gallons capacity; Winch Truck; Wrecker, Tow truck and similar equipment

GROUP 3 - Flatbed (single rear axle); Pickup Sweeper; Pickup Truck. (Adjust Group 3 upward by \$2.00 per hour for onsite work only)

GROUP 4 - Escort or Pilot Car

GROUP 5 - Mechanic

#### HAZMAT PROJECTS

Anyone working on a HAZMAT job, where HAZMAT certification is required, shall be compensated as a premium, in addition to the classification working in as follows:

LEVEL C: +\$.25 per hour - This level uses an air purifying respirator or additional protective clothing.

LEVEL B: +\$.50 per hour - Uses same respirator protection as Level A. Supplied air line is provided in conjunction with a chemical "splash suit."

LEVEL A: +\$.75 per hour - This level utilizes a fully-encapsulated suit with a self-contained breathing apparatus or a supplied air line.

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 TEAM0690-004 01/01/2019

ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN,  
 GARFIELD, GRANT KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE,  
 STEVENS, WALLA WALLA, WHITMAN AND YAKIMA COUNTIES

Rates                      Fringes

Truck drivers: (AREA 1:  
 SPOKANE ZONE CENTER: Adams,  
 Chelan, Douglas, Ferry,  
 Grant, Kittitas, Lincoln,  
 Okanogan, Pen Oreille,  
 Spokane, Stevens, and Whitman  
 Counties

AREA 1: LEWISTON ZONE CENTER:  
 Asotin, Columbia, and  
 Garfield Counties

AREA 2: PASCO ZONE CENTER:  
 Benton, Franklin, Walla Walla  
 and Yakima Counties)

AREA 1:		
GROUP 1.....	\$ 23.91	17.40
GROUP 2.....	\$ 26.18	17.40
GROUP 3.....	\$ 26.68	17.40
GROUP 4.....	\$ 27.01	17.40
GROUP 5.....	\$ 27.12	17.40
GROUP 6.....	\$ 27.29	17.40
GROUP 7.....	\$ 27.82	17.40
GROUP 8.....	\$ 28.18	17.40
AREA 2:		
GROUP 1.....	\$ 26.05	17.40
GROUP 2.....	\$ 28.69	17.40
GROUP 3.....	\$ 28.80	17.40
GROUP 4.....	\$ 29.13	17.40
GROUP 5.....	\$ 29.24	17.40
GROUP 6.....	\$ 29.24	17.40
GROUP 7.....	\$ 29.78	17.40
GROUP 8.....	\$ 30.10	17.40

Zone Differential (Add to Zone 1 rate: Zone 1 + \$2.00)

BASE POINTS: Spokane, Pasco, Lewiston

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



Zone 1: 0-45 radius miles from the main post office.  
Zone 2: Outside 45 radius miles from the main post office

#### TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Escort Driver or Pilot Car; Employee Haul; Power Boat Hauling Employees or Material

GROUP 2: Fish Truck; Flat Bed Truck; Fork Lift (3000 lbs. and under); Leverperson (loading trucks at bunkers); Trailer Mounted Hydro Seeder and Mulcher; Seeder & Mulcher; Stationary Fuel Operator; Tractor (small, rubber-tired, pulling trailer or similar equipment)

GROUP 3: Auto Crane (2000 lbs. capacity); Buggy Mobile & Similar; Bulk Cement Tanks & Spreader; Dumptor (6 yds. & under); Flat Bed Truck with Hydraulic System; Fork Lift (3001-16,000 lbs.); Fuel Truck Driver, Steamcleaner & Washer; Power Operated Sweeper; Rubber-tired Tunnel Jumbo; Scissors Truck; Slurry Truck Driver; Straddle Carrier (Ross, Hyster, & similar); Tireperson; Transit Mixers & Truck Hauling Concrete (3 yd. to & including 6 yds.); Trucks, side, end, bottom & articulated end dump (3 yards to and including 6 yds.); Warehouseperson (to include shipping & receiving); Wrecker & Tow Truck

GROUP 4: A-Frame; Burner, Cutter, & Welder; Service Greaser; Trucks, side, end, bottom & articulated end dump (over 6 yards to and including 12 yds.); Truck Mounted Hydro Seeder; Warehouseperson; Water Tank truck (0-8,000 gallons)

GROUP 5: Dumptor (over 6 yds.); Lowboy (50 tons & under); Self-loading Roll Off; Semi-Truck & Trailer; Tractor with Steer Trailer; Transit Mixers and Trucks Hauling Concrete (over 6 yds. to and including 10 yds.); Trucks, side, end, bottom and end dump (over 12 yds. to & including 20 yds.); Truck-Mounted Crane (with load bearing surface either mounted or pulled, up to 14 ton); Vacuum Truck (super sucker, guzzler, etc.)

GROUP 6: Flaherty Spreader Box Driver; Flowboys; Fork Lift (over 16,000 lbs.); Dumps (Semi-end); Mechanic (Field); Semi-end Dumps; Transfer Truck & Trailer; Transit Mixers & Trucks Hauling Concrete (over 10 yds. to & including 20 yds.); Trucks, side, end, bottom and articulated end dump (over 20 yds. to & including 40 yds.); Truck and Pup;

Tournarocker, DWs & similar with 2 or more 4 wheel-power tractor with trailer, gallonage or yardage scale, whichever is greater Water Tank Truck (8,001- 14,000 gallons); Lowboy(over 50 tons)

GROUP 7: Oil Distributor Driver; Stringer Truck (cable operated trailer); Transit Mixers & Trucks Hauling Concrete (over 20 yds.); Truck, side, end, bottom end dump (over 40 yds. to & including 100 yds.); Truck Mounted Crane (with load bearing surface either mounted or pulled (16 through 25 tons);

GROUP 8: Prime Movers and Stinger Truck; Trucks, side, end, bottom and articulated end dump (over 100 yds.); Helicopter Pilot Hauling Employees or Materials

Footnote A - Anyone working on a HAZMAT job, where HAZMAT certification is required, shall be compensated as a premium, in addition to the classification working in as follows:

LEVEL C-D: - \$.50 PER HOUR (This is the lowest level of protection. This level may use an air purifying respirator or additional protective clothing.

LEVEL A-B: - \$1.00 PER HOUR (Uses supplied air in conjunction with a chemical splash suit or fully encapsulated suit with a self-contained breathing apparatus.

Employees shall be paid Hazmat pay in increments of four(4) and eight(8) hours.

NOTE:

Trucks Pulling Equipment Trailers: shall receive \$.15/hour over applicable truck rate

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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 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)).

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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.

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### 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

### General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

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.

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

General Wage Decision

Project: Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

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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](mailto:report.center@dot.gov), phone 814-239-1160, or fax 814-239-2156.

Digitally signed by  
Jordan Adam  
Jordan Adam Becker  
Date: 2023.03.14  
15:46:38-07'00'



Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

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# SCR TABLE OF CONTENTS

## 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.

### DIVISION 100 GENERAL REQUIREMENTS

Section 101. — TERMS, FORMAT, AND DEFINITIONS .....	E-1
Section 102. — BID, AWARD, AND EXECUTION OF CONTRACT .....	E-3
Section 103. — SCOPE OF WORK.....	E-4
Section 104. — CONTROL OF WORK .....	E-7
Section 105. — CONTROL OF MATERIAL .....	E-9
Section 106. — ACCEPTANCE OF WORK .....	E-11
Section 107. — LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC.....	E-13
Section 108. — PROSECUTION AND PROGRESS .....	E-20
Section 109. — MEASUREMENT AND PAYMENT .....	E-22

### DIVISION 150 PROJECT REQUIREMENTS

Section 152. — CONSTRUCTION SURVEY AND STAKING .....	E-28
Section 153. — CONTRACTOR QUALITY CONTROL.....	E-32
Section 154. — CONTRACTOR SAMPLING AND TESTING.....	E-36
Section 155. — SCHEDULES FOR CONSTRUCTION CONTRACTS .....	E-37
Section 156. — PUBLIC TRAFFIC.....	E-46
Section 157. — SOIL EROSION AND SEDIMENT CONTROL.....	E-47

### DIVISION 200 EARTHWORK

Section 201. — CLEARING AND GRUBBING.....	F-1
Section 204. — EXCAVATION AND EMBANKMENT .....	F-2

### DIVISION 400 ASPHALT PAVEMENTS AND SURFACE TREATMENTS

Section 407. — CHIP SEAL .....	F-4
--------------------------------	-----

### DIVISION 600 INCIDENTAL CONSTRUCTION

Section 602. — CULVERTS AND DRAINS .....	F-5
Section 625. — TURF ESTABLISHMENT .....	F-6
Section 633. — PERMANENT TRAFFIC CONTROL.....	F-8
Section 634. — PERMANENT PAVEMENT MARKINGS .....	F-9
Section 635. — TEMPORARY TRAFFIC CONTROL .....	F-10

**DIVISION 700 MATERIAL**

Section 702. — ASPHALT MATERIAL .....	G-1
Section 705. — ROCK .....	G-2
Section 713. — ROADSIDE IMPROVEMENT MATERIAL .....	G-3

<b>DIVISION 100</b> <b>GENERAL REQUIREMENTS</b>
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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

**NPDES** — National Pollutant Discharge Elimination System

**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).

**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

**102.05A Contract Award.** (Added Subsection).

Follow the requirements of FAR Provision 52.214-19, Contract Award – Sealed Bidding – Construction.

The successful bidder will be awarded all pay items listed in the bid schedule.

## 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.

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.

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.

### 104.06 Other Contracts. (Added Subsection).

Follow the requirements of FAR Clause 52.236-8 Other Contracts.

Clallam County PUD is expected to relocate or adjust their power facilities prior to and during construction of this project. Coordinate work with Alan Plasch, 360.565.3456, [aplash@clallumpud.net](mailto:aplash@clallumpud.net).

Before performing construction operations at the following sites, provide at least a 7 day notice to the Utility Company. Allow 4 days for the utility company to complete any relocations (temporary or permanent).

**(a) Site 1.** Anticipated utility company work includes the complete relocation of poles and overhead power after clearing and grubbing is completed. Provide utility company with

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

schedule for clearing and grubbing operations and notify the utility company when clearing and grubbing operations are completed.

**(b)** Site 2. Allow the utility company to temporarily relocate their facilities before starting construction operations at this site. Allow the utility company to permanently adjust or relocate their underground facilities after roadway excavation is completed, and before erosion control products are installed. Provide utility company with schedule for roadway excavation work and notify the utility company when roadway excavation work is completed.

**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 sourced from sites certified by the Clallam, Jefferson, Mason, or Grays Harbor County Noxious Weed Board as being free of species on the county's noxious weed list (updated annually). Fresh-quarried material is always preferred over stockpiled material.

Specifically, the presence of the following invasive plants are grounds for rejection of the source:

- (1) Cheatgrass (*Bromus tectorum*);
- (2) Japanese Brome (*Bromus japonicus*);
- (3) Hawkweeds (*Hieracium spp.*);
- (4) Reed canarygrass (*Phalaris arundinacea*);
- (5) Canada thistle (*Cirsium arvense*); and

(6) Oxeye daisy (*Leucanthemum vulgare*).

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 prior to their use in the work. Request for inspections of material locations for non-native species of concern by CO requires a minimum 14-day notice.

**105.04 Handling and Storing Material.** Delete the text of the second paragraph and substitute the following:

Use only portions of the right-of-way and road easement approved 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.

**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**

01/06/23(4)– 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). The Government will extend the permits and agreements in Section H as needed. 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 permits or agreements. Furnish copies of all permits and agreements that are not in the contract.

Comply with the requirements of the Fire Protection and Suppression Plan included in this contract (See Section I).

### **107.01A National Pollutant Discharge Elimination System Permit (NPDES).** (Added Subsection).

**(a) Erosion Control Supervisor.** Provide a qualified Erosion Control Supervisor and erosion control team member(s) according to Subsection 157.03.

**(b) Preparation of the Storm Water Pollution Prevention Plan (SWPPP).** Prepare a SWPPP in accordance with the requirements of the NPDES Construction General Permit (CGP) and contract requirements. The SWPPP may use information found in the Government's preliminary SWPPP listed under FAR Clause 52.236-4. Work on the SWPPP may begin before the Notice to Proceed is given. Follow the FHWA format in the SWPPP provided by the CO, including the narrative, maps, erosion control details and layout sheets, forms, and documentation.

**(1)** Complete the SWPPP narrative provided in the physical data or prepare a new SWPPP narrative. Include in the SWPPP narrative a statement stating that the Contractor is responsible for performing all work required in the SWPPP, including establishing measures to prevent water pollution, performing inspections, and submitting required reports.

**(2)** Revise or prepare new site maps and erosion/sediment control details and layout sheets 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)* Erodible stockpiles; and

(d) Other locations required by the CGP.

**(3)** Identify the Erosion Control Supervisor and erosion control team member(s) by name and position. Include their individual responsibilities according to Section 6.1 of the CGP and their qualifications in the 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 SWPPP. Upon approval by the CO, print one paper copy and place in a binder following the FHWA tab format. Co-sign the approved SWPPP and maintain it as the SWPPP of record for the project. Make the SWPPP available for public and regulatory-agency inspection.

**(c) Notice of Intent (NOI).** After the SWPPP is signed, file a NOI with the EPA as a federal operator.

File the NOI at the following website:

<https://cdx.epa.gov/cdx>

Provide a copy of the NOI and EPA acknowledgement email to the CO.

Do not perform any ground disturbing activities including clearing, grubbing, or earthwork until the conclusion of the 14-day waiting period as stated in the EPA acknowledgement letter or as otherwise provided by EPA.

**(d) 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 tracking number.
- (2)** Contractor's contact name and phone number for obtaining additional information.
- (3)** Laminated 8.5-inch by 11-inch sheet of paper that includes the following statements:
  - If you would like to obtain a copy of the NOI, use the following EPA website to search for the permit: <https://permitsearch.epa.gov/epermit-search/ui/search>
  - If you would like to obtain a copy of the Storm Water Pollution Prevention Plan (SWPPP) for this site, contact the Federal Highway Administration by email at [WFLHDStormwater@dot.gov](mailto:WFLHDStormwater@dot.gov)
  - If you observe indicators of storm water pollutants in the discharge or in the receiving water, contact the EPA through the following website: <https://www.epa.gov/enforcement/report-environmental-violations>.

Removal and disposal of the sign panel, posts, and any other information posted on the sign panel will be performed by others.



**(e) Photographs.** Identify representative locations of the project for photograph points and provide a site plan showing the photograph locations for approval. Once approved by the CO, take either ground or aerial photographs from each identified location before ground disturbing activities begin. All photos must be clear and in focus and in the original format and resolution. Include the date each photograph was taken and a brief description of the area of the site captured by the photograph. Include copies of photographs in the SWPPP.

**(f) Inspections.** Perform SWPPP inspections as required in the CGP, Subsection 157.14, and the SWPPP. Document inspections using 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 submittal of the Notice of Termination (NOT) or final acceptance.

**(g) Revisions to the SWPPP.** Ensure that all erosion and sediment control procedures, practices, and inspections are current as required by the CGP. Revise the SWPPP as necessary during construction and as required by the CGP. 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 CGP.

**(h) Notice of Termination (NOT).** Provide post-construction photographs according to the requirements in Subsection 107.01A(e). Take photographs from the same locations and include copies of photographs in the SWPPP. File the NOT, with required photographs, when all conditions for terminating the permit have been met as described in CGP. Do not file the NOT without the CO's approval. Provide a copy of the NOT and EPA acknowledgement email to the CO.

Provide the CO with the complete SWPPP of record upon final acceptance of the project, including inspection forms, logs, photographs, and all other required documentation added during the project.

**(i) 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:**

Add the following to the first paragraph:

Contact John Wayand of Jefferson County at 360-385-9377, [jwayand@co.jefferson.wa.co](mailto:jwayand@co.jefferson.wa.co), when access is needed through the locked gate on Undie Road at the County line.

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:

Stop work if paleontological remains and/or archeological specimens are encountered within the construction area. Specimens are not the property of the Contractor, and will be handled by designated representatives. Notify the CO within 1 hour of any discovery. Include a brief statement of the location and details of the finding.

Add the following to the fifth paragraph:

Utility relocations identified under Subsection 104.06 will be relocated by others.

Delete the first sentence of the eighth paragraph and substitute the following:

Excluding the utility work identified under Subsection 104.06, notify the CO if additional utility work is required.

**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 100 feet of wetlands or water daily for fluid leaks.

Store chemicals in water-tight containers that are kept closed, sealed, and secured when not being actively used. Store chemicals a minimum of 50 feet from waters and storm drain inlets. Use secondary containment to capture leaks or spills.

**(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 the project area. 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.

**(d) Clearances for Contractor-selected, noncommercial areas.** Delete the text of this Subsection and substitute the following:

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.

Add the following:

**(e) Other requirements.** Comply with the following requirements:

**(1)** In-water work or work below the ordinary high water mark is not allowed.

**(2)** Conduct construction activities that produce noise above 80 decibels between two hours after sunrise and two hours before sunset for all work between April 1 to September 23 (dates inclusive).

**(3)** Do not conduct clearing operations between April 1 and June 30 (dates inclusive) to avoid impacting nesting birds.

**(4)** If active bird nests are identified during clearing operations, suspend work immediately at the discovery site, notify the CO within 1 hour, and continue operations in other approved areas. Obtain approval from the CO before restarting operations.

**(5)** Do not disturb any wildlife species (i.e., reptiles, migratory birds, raptors, or bats) found nesting, hibernating, estivating, or otherwise living in, or immediately nearby, worksites.

**(6)** Notify CO within 24 hours of locating a dead, injured, or sick endangered or threatened species. Listed wildlife species include marbled murrelet, northern spotted owl, streaked

horned lark, and yellow-billed cuckoo. Provide CO date, time, precise location of the injured animal or carcass, and any other pertinent information. Do not disturb any evidence associated with the specimen.

**(7)** 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.

**(8)** Remove all trash from the project site daily and dispose of trash according to Subsection 203.05.

**(9)** Construction equipment not performing work, is not allowed to idle longer than 15 minutes without use.

**(10)** Conduct machinery maintenance and refueling at a distance of 100 feet or greater from any wetlands or waters. Refueling of equipment may occur within 100 feet of waterbodies if spill prevention measures are in place and if approved by the CO.

**(11)** When operating stationary equipment (e.g., generators, cranes, etc.) within 100 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).

**(12)** Provide hazardous spill clean-up material onsite at all times. Avoid/minimize the introduction of chemical contaminants associated with machinery used on the project (fuel, oil, hydraulic fluid, etc.).

**(13)** Prior to starting work each day, inspect all machinery for leaks (fuel, oil, hydraulic fluid, etc.) and make all necessary repairs before the commencement of work.

**Section 108. — PROSECUTION AND PROGRESS**

01/06/2023– FP-14

**108.01 Commencement, Prosecution, and Completion of Work.** Amend as follows:Delete the text of the second paragraph and substitute the following:

A preconstruction conference will be held after the contract is awarded and before beginning work. A baseline schedule submittal meeting is also required according to Subsection 155.10. The schedule manager, project manager, and project superintendent are required to attend the preconstruction conference and the schedule submittal meeting unless otherwise approved by the CO.

Only mobilization, construction survey and staking, temporary traffic control, and work under Section 637 is allowed prior to approval of the preliminary work plan.

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.

Limit work as provided for in Sections 104, 105, 107, 156, and 157.

**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.

**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.

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

The Government will pay the cost for two flaggers each day when work is being performed requiring temporary traffic control while liquidated damages are being assessed. All other temporary traffic control costs to perform work while liquidated damages are being assessed will be paid by the Contractor and will not be reimbursed by the Government.

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.

**Section 109. — MEASUREMENT AND PAYMENT**

06/15/22– 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: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



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.

**109.03 Weighing Procedures and Devices.** Delete the first paragraph of Subsection (c) and substitute the following:

**(c) Project weighing system.** Furnish, erect, and maintain acceptable automatic digital scales. For small quantities, manual scales may be used when approved in writing by the CO and if the method of weighing meets all other contract requirements. Provide scales that record mass at least to the nearest 100 pounds (50 kilograms). Maintain the scale accuracy to within 0.5 percent of the correct mass throughout the range of use.

**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 7<sup>th</sup> day after the closing date. Invoices received by the designated billing office after the 16<sup>th</sup> 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 5<sup>th</sup> day after the closing date. Invoices received by the designated billing office after the 5<sup>th</sup> 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 7<sup>th</sup> 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 18<sup>th</sup> 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 23<sup>rd</sup> day following the closing date. The Contractor will be notified by the 23<sup>rd</sup> day following the closing date of the reasons for any changes to the invoice.

*(b) Invoices received between the 8<sup>th</sup> and 16<sup>th</sup> 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**

<b>Awarded unit price</b>	<b>Decimal Accuracy of Quantities for Payment</b>
< \$1.00	0 decimals
≥ \$1.00 to < \$100.00	1 decimal
≥ \$100.00 to < \$1000.00	2 decimals
≥ \$1000.00	3 decimals

<b>DIVISION 150</b> <b>PROJECT REQUIREMENTS</b>
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## Section 152. — CONSTRUCTION SURVEY AND STAKING

01/06/23-FP14

### Description

#### 152.01 Add the following:

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

#### 152.04 **General.** Delete the text of this Subsection and substitute 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.

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.

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

**(d) 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.

**(e) 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) Proposed finished surface in LandXML (.xml) format;
- (5) Proposed 3D breaklines in Drawing Exchange Format (.dxf);
- (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.

**(f) 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:

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 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.



**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**

04/02/21(3)–FP-14

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)** Clearing and Grubbing (Section 201);

**(2)** Excavation and Embankment (Section 204);

**(3)** Earthwork Geosynthetics (Section 207);

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

- (4) Minor Crushed Aggregate (Section 302);
- (5) Road Reconditioning (Section 303);
- (6) Chip Seal (Section 407); and
- (7) Turf Establishment (Section 625);

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; and*
- (4) Culverts – before starting installation.*

*(b) Construction work.*

- (1) Erosion control devices – prior to any ground disturbing activities;*
- (2) Sub grade – before placing pavement structure; and*
- (3) Any pavement structure layer requiring hubs – before placing next layer.*

The CO may request submission of a form WFLHD 470 for worked 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**

06/15/22– FP14

**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

01/06/23(2)– FP-14

Delete this Section and substitute the following:

### Description

**155.01** This work consists of scheduling, monitoring, and reporting of all construction activities. Follow the requirements of FAR Clause 52.236-15, Schedules for Construction Contracts.

### 155.02 Definitions.

**(a) Bar Chart Method (BCM) Schedule.** A time scaled graphic representation of a project displaying the overall sequencing of work. Each activity includes an activity number, description, start and finish date, and duration. In addition, bar chart schedules list predecessor activities that must be finished before each activity can be started.

**(b) Baseline Schedule.** The initial schedule showing the order in which the Contractor proposes to perform the work, and the dates by which the Contractor contemplates starting and completing the contract work.

**(c) Critical Activity.** An activity whose duration, if increased, will increase the time required to complete the project unless a schedule adjustment is made. These activities are activities on a schedule's critical path.

**(d) Critical Path.** The longest sequence of activities in a schedule that determines the projects duration.

**(e) Critical Path Method (CPM) Schedule.** A computer-generated time-scaled logic diagram showing: the sequence in which the contractor plans to perform the work; the interdependence of all activities and milestones; the work completed through the data date; and the remaining work necessary to complete the project.

**(f) Data Date.** The status reporting date upon which schedule updates (i.e., addition or deletion of activities, revised logic, updates to percent complete, remaining durations, etc.) are made. Scheduling software uses the data date to base its network calculations and is typically shown on the schedule as a vertical line separating the completed (as-built) work and scheduled (as-planned) work.

**(g) Schedule Narrative.** A written narrative describing how the contractor plans to organize and execute the work described in the contract and the rationale and assumptions that went into developing the schedule including labor, equipment, and materials to be used, anticipated production rates, and work calendars.

**(h) Schedule Submittal.** A submittal that includes the most current schedule, schedule narrative, and submittal log. A schedule submittal is required for the baseline schedule and each schedule update.

**(i) Schedule Update.** An update to the previous approved schedule submittal. A schedule update is provided on a monthly basis (or sooner if necessary) showing the completed work and the remaining work necessary to complete the project.

**(j) Submittal Log.** A log that tracks status of contract submittals.

### **Construction Requirements**

**155.03 General.** Schedule approval does not relieve the Contractor of the responsibility to schedule the work in a practicable manner that meets the contract requirements. Failure to include elements of work in the schedule submittal required for performance of the contract, even if previously approved by the CO, does not excuse the Contractor from being responsible for completion of all the specified work by the contract's fixed completion date.

The CO may reject any schedule submittal with a projected completion date past the contract's fixed completion date. Approval of a schedule submittal with a projected completion date past the contract's fixed completion date does not excuse the Contractor from being responsible for completing the work by the contract's fixed completion date.

When a schedule is "Accepted as Noted", address such comments when preparing resubmittals or future schedule submittals, when appropriate.

Failure to receive approval of a prior schedule submittal does not relieve the Contractor of the responsibility to provide each specified schedule update submittal.

### **155.04 Schedule Manager.**

**(a) Qualifications.** Provide a schedule manager with a minimum of 5 years of construction scheduling experience. To be qualified, experience must demonstrate the person has supported active construction projects by preparing, evaluating, and actively managing construction schedules during 3 of the last 5 years including:

- (1)** Projects of similar size and scheduling complexity.
- (2)** At least two highway or bridge type construction projects.

**(b) Scheduling Personnel.** Provide a schedule manager responsible for preparing and managing the schedule submittals and the schedule submittal meetings within 7 days of Notice to Proceed, unless otherwise approved by the CO. Submit the name and qualifications of the schedule manager for approval. Provide ONLY information that is relevant to the qualifications specified in Subsection 155.04(a). Documents that include unrelated or non-relevant information will be not be accepted.



Do not designate the project superintendent, QC manager, foreman, or traffic control supervisor as the schedule manager.

**155.05 Preliminary Work Plan.** A preliminary work plan is a written narrative of contract activities that will be in progress within the first 45 days after the Notice to Proceed has been issued. Limit construction activities according to Subsection 108.01 until the preliminary work plan is accepted by the CO.

Include in the preliminary work plan all elements listed in Subsection 155.06(b) with the exception of (2).

The preliminary work plan is due a minimum of 7 days prior to the preconstruction conference.

Within 7 days after the preconstruction conference or resubmittal date if rejected, the preliminary work plan will be accepted or rejected. If rejected, submit a revised plan within 3 days.

**155.06 Schedule Submittal.** The Schedule Submittal includes the Schedule, Schedule Narrative, Submittal Log, and Certification.

(a) Due date. The baseline schedule submittal is due within 14 days of Notice to Proceed.

Monthly schedule submittals are due within 7 days following the progress estimate closing date established in accordance with Subsection 109.08.

Resubmittal of rejected schedules are due within 3 days of the rejected date unless otherwise approved by the CO.

When no schedule meeting is held, the schedule (re)submittals will be approved or rejected within 14 days of receipt. When a schedule meeting is held, the schedule submittal with updates resulting from the meeting will be approved or rejected within 7 days of receipt.

(b) Prepare schedule submittals according to Subsection 103.06. Include the following.

(1) Title page with contract information; Contractor name; current fixed completion date; date of submittal; name of submittal; progress estimate number; submittal number, and contract number.

(2) BCM schedule;

(3) Schedule Narrative;

(4) Submittals log; and

(5) Certifications:

(a) Schedule Certification. Each of the contractor personnel having a primary role in developing the construction schedule, scheduling work activities, and/or managing the project shall certify the schedule as follows:

*“By signature below, I certify this schedule submittal accurately reflects the contractor’s plans for constructing the project.”*

Unless otherwise approved by the CO, certifications by each of the following are required: the schedule manager, project manager, and project superintendent.

(b) Subcontractor Certification. The project manager responsible for scheduling subcontractor work shall certify the following when any subcontractor is performing work on scheduled critical path activities:

*“By signature below, I certify each subcontractor responsible for work associated with critical path activities has reviewed the schedule submittal and agreed the schedule accurately reflects the Subcontractor’s schedule for completing the work.”*

(c) Time Impact Analyses. For the purpose of performing time impact analyses in Subsection 108.03, use the schedule submittal with data date matching the closing date of the progress estimate just prior to the CO being notified of the change.

#### **155.07 Schedule.**

(a) Develop a BCM or CPM schedule. Include at a minimum the following:

(1) Schedule all work to finish on or before the Fixed Completion Date identified in FAR Clause 52.211-10 Commencement, Prosecution, and Completion of Work.

(2) Identify activity ID and activity name/description. Associate activity or groups of activities to the contract pay items. If no pay item exists, relate to the specification section. Include activities for submittals, submittal reviews, fabrication, and deliveries.

(3) Arrange all activities in the order the work will be performed.

(4) Identify all critical activities that are controlling factors in completing the work by the contract completion date.

(5) List predecessor activities that must be finished before each activity can be started.

(6) For each activity, identify planned activity start date, completion date, and duration.

(7) Provide a time scaled progress bar chart showing graphically, the time needed to perform each activity and its relationship in time to other activities. For activities that are currently in progress or have completed, identify percent complete, remaining duration, actual start date, and actual finish date.

(8) Provide enough space between each activity to permit the addition of two bars for schedule updates. Use one space to plot revised as-planned schedule for each activity (if any). Use the second space to show the actual as-constructed schedule for each activity.

(9) Show the Data Date.

(10) Incorporate activity changes that are the result of executed contract modifications.

**(b) Requests to exclude activities from the schedule.** Activities for continuous, non-critical items such as flagging, temporary traffic control, and quality control may be excluded from the schedule.

Activities that are considered an integral part of other scheduled activities may be excluded from the schedule if certified that completion of the activities will not have an effect on the critical path, but only with prior written approval of the CO. If approved, include a list of the activities in the schedule narrative along with the following certification:

*“By excluding the activities listed above from the schedule, the Contractor certifies that work associated with these pay items or activities will have no effect on the critical path activities and the Contractor will not submit or request consideration of their affects when performing time impact analyses associated with this contract.”*

**(c) Schedule acceleration or recoveries.** The contractor has the right to accelerate activities within the schedule to recover contractor responsible delays. When necessary, adequately support schedule recoveries in the schedule narrative. Any acceleration is subject to all limitations included in the contract.

**155.08 Schedule Narrative.** Prepare a written narrative describing how the contractor plans to organize and execute the work described in the contract and the rationale and assumptions that went into developing the schedule. Refer to specific activities by activity ID and activity name/description. Ensure there are no conflicts between the schedule and schedule narrative.

**(a)** For the schedule narrative provided with the baseline schedule submittal:

**(1)** Describe the planned critical path(s) and the general sequence of work;

**(2)** For all activities excluding mobilization and submittals, describe:

*(a)* Scope of work;

*(b)* Locations (e.g., station numbers);

*(c)* Resource loading planned to perform the work. Include manpower allocation by types of labor and crew size, types and number of equipment and special equipment, materials, materials source locations; and

*(d)* Basis for calculating the duration for each activity stated as quantity production rates (such as quantity of excavation per day), in the same units as the pay item quantity unless otherwise approved in writing by the CO.

For individual activities divided into multiple segments, the resource loading and production rates can be stated once in the narrative if they are similar, provided all of the locations are noted and the planned duration at all locations is reasonably supported by the planned resource loading and production rate;

- (3)** Describe the general work schedule including workdays per week, number of shifts per day, and number of hours per shift;
  - (4)** Identify the subcontractor or supplier performing an activity and identify their activity codes used on the schedule diagram once known. If a supplier or subcontractor has not yet been secured, indicate activities that will be completed by a supplier or subcontractor and state assumptions used to develop the schedule activities;
  - (5)** Describe site mobilization as well as expected and critical delivery dates for equipment or material that may affect completion of the project;
  - (6)** Describe organizational limitations (such as resource constraints or subcontractor commitments) that may limit scheduling flexibility; and
  - (7)** Provide a list and description of constraints used within the scheduling software.
- (b)** For schedule narratives provided with the schedule submittal updates, limit content to progress updates and changes that have occurred since the last approved schedule narrative. Include the following:
- (1)** Describe the progress of work. If progress is less than planned, explain why and explain what, if any, modifications will be made to meet the Fixed Completion Date.
  - (2)** Document all changes and updates related to production rates; durations; calendar or work shift adjustments; labor, material, and equipment availability; suppliers and subcontractors; and schedule logic. Document all changes made within the schedule software and the reason for each change. Calculated outputs from the scheduling software (e.g., revised float values or planned activity start and finish dates) do not need to be documented in the schedule narrative.
  - (3)** Document all new activities inserted into the schedule and discuss the source(s) of, or reasons for, each new activities. Provide all information required in Subsection 155.08 related to each new activity.
  - (4)** If critical activities on the schedule update are different from those shown on the previously approved schedule, discuss source(s) of, or reasons for, the change(s).
  - (5)** Document any critical path delays, discuss the source(s) of and reasons for the critical path delays.
  - (6)** Document any planned schedule recoveries or acceleration, discuss the plan for achieving the schedule recovery (e.g., increased number of shifts, overtime operations, equipment and labor, etc.) and why they are necessary.

**155.09 Submittal Log.** Prepare a submittal log that lists all contract documents and submittals requiring approval in a format acceptable to the CO.

Include at a minimum columns for submittal number, section or item number, submittal description, date submitted, due by date, approval date, and comments.

Update the log as submittals are submitted and approved. Provide a copy of the log with each progress estimate and as requested by the CO.

**155.10 Scheduling Meetings.** The CO may reject the schedule submittal prior to holding any scheduling meeting.

Hold a baseline schedule meeting a minimum of 14 days after the (re)submittal date unless an earlier date is approved by the CO. Plan for the baseline schedule meeting to last 4 hours.

Monthly scheduling meetings may be requested by either party. When requested, hold scheduling meetings within 14 days of the (re)submittal date unless a later date is agreed upon. Plan for the schedule submittal meetings to last for at least 1 hours.

Scheduling meetings format:

- (a) The schedule manager, project manager, and project superintendent are required to attend, unless otherwise approved by the CO.
- (b) Provide virtual meetings capable of being attended virtually with audio, face-to-face video, and screen sharing that will allow Contractor and Government attendees to view and participate in discussions whether in person or attending virtually. Verify virtual capabilities with the CO at least 3 days in advance of the baseline schedule meeting.
- (c) Interactively review the schedule, schedule narrative, and submittals list for conformance with contract requirements.
- (d) Make corrections if errors or omissions are discovered and resubmit the schedule submittal based on meeting discussions. Submit the updated schedule submittal by the end of the meeting unless a later date is approved by the CO.
- (e) Provide meeting minutes and a log of all changes and revisions made as a result of the meeting within 3 days of the meeting, or as approved by the CO. Correct any errors and omissions if identified and furnish a copy with certifications signed by the schedule manager, project manager, superintendent.

**155.11 Lookahead Schedules.** At the start of each week, provide a look-ahead schedule listing all planned work activities for the next 2 to 3 weeks and the days the activities will be performed. Provide lookahead schedules in the form of a spreadsheet, table, or printout from a scheduling

software as approved by the CO. The CO may request weekly meetings to review actual progress and planned activities shown in the look-ahead schedule.

**155.12 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 each shift. CDR's will be approved or rejected by the 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:

*"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>

**155.13 Acceptance.** Schedule submittals and preliminary work plans will be evaluated under Subsection 106.02 and 106.03.

Meeting minutes will be evaluated under Subsection 106.02.

CDR's will be evaluated under Subsection 106.02 and 106.03.

### **Measurement**

**155.14** Measure the Section 155 items listed in the bid schedule according to Subsection 109.02.

### **Payment**

**155.15** 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 Section 155 lump sum pay item 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 baseline schedule submittal is approved;

**(b)** Payment of the remaining portion of the lump sum will be prorated based on the estimated number of monthly schedule submittals (i.e., months from Notice to Proceed to fixed completion date).

No progress payment will be made until the Schedule Manager and baseline schedule submittal are approved.

A mandatory 10 percent withholding of the entire progress payment will be applied if the latest schedule submittal has not been received by the due date or the previous schedule submittal has not been approved. Progress payment withholdings will not be released until the submittal and approval of the submittals are current.

Payments made for work under this specification do not affect any rights the government may have because of failure to meet the project schedules for construction requirements.

**Section 156. — PUBLIC TRAFFIC**

01/06/23– FP14

**Construction Requirements****156.04 Accommodating Traffic During Work.** Add the following:

Immediately open the road to emergency vehicles.

**156.07 Limitations on Construction Operations.** Amend as follows:

Delete paragraph (g) and substitute the following:

(g) Provide two-way radio communications between flaggers and pilot cars. Provide two-way radio communications between flaggers, unless flaggers can see each other and communicate. Citizen band radios are not acceptable. Make radio equipment available to the CO.

Delete paragraph (i) and substitute the following:

(i) Limit construction-caused delays to public traffic to a maximum of 10 minutes per passage through the project; and

Add the following:

(k) Do not perform construction operations that cause delays or otherwise interferes with public traffic during the following dates and times.

(1) From 6:00 p.m. Friday through 6:00 a.m. Tuesday for Memorial Day holiday.

(2) From 6:00 p.m. Friday through 6:00 a.m. Tuesday for Labor Day holiday.

(3) From 6:00 p.m. July 3 through 6:00 a.m. July 5 for Independence Day Holiday.

(4) On any other holiday listed in Subsection 101.04, unless approved by the CO.

(l) 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.** Add the following:

(l) Transport personnel, construction signs, barricades, drums, cones, tubular markers, and other traffic control devices.



## Section 157. — SOIL EROSION AND SEDIMENT CONTROL

01/06/23(4)–FP-14

### Material

#### 157.02 Add the following to the material list:

Filter Rock

705.08

### Construction Requirements

#### 157.03 **Qualifications.** Delete this Subsection and substitute the following:

Provide an Erosion Control Supervisor (ECS) and an erosion control team. The ECS and members of the team conducting site inspections must meet one of the following criteria:

- (a) EPA Construction Inspection Course;
- (b) Alaska Certified Erosion and Sediment Control Lead (AK-CESCL);
- (c) Idaho Water Pollution Control Manager (WPCM);
- (d) Montana Department of Environmental Quality (DEQ) SWPPP Administrator;
- (e) Oregon Department of Transportation (ODOT) Certified Erosion Sediment Control Manager (ESCM);
- (f) Washington State Certified Erosion and Sediment Control Lead (CESCL);
- (g) Other State DOT-Approved Erosion and Sediment Control Certification;
- (h) Certified Professional in Erosion and Sediment Control (CPESC);
- (i) Certified Professional in Storm Water Quality (CPSWQ);
- (j) Certified Erosion, Sediment and Storm Water Inspector (CESSWI);
- (k) National Institute for Certification in Engineering Technologies (NICET) Erosion and Sediment Control Level 3 or 4; or
- (l) Certified Inspector of Sediment and Erosion Control (CISEC).

#### 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 NPDES, the Construction General Permit (CGP), the project Storm Water Pollution Prevention Plan (SWPPP) of record, and this contract.

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements

Immediately report to the CO any incident of non-compliance with the CGP that may endanger health or the environment. Provide copies of any correspondence or reports required by either the CGP or the SWPPP.

Provide an ECS and erosion control team 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 CGP or the SWPPP. At the preconstruction conference furnish the names, project office address, 24-hour telephone number(s), and qualifications for the ECS and each member of the erosion control team.

If wood chips are used, do not import without approval from the CO.

**157.05 Controls and Limitations on Work.** Delete 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.
- (c) Implement best management practices to confine vegetation and soil disturbance to the minimum area, and minimum length of time, as necessary to complete the action, and otherwise prevent or minimize erosion associated with the action area.
- (d) Stabilize and maintain construction access points between unpaved and paved sites to minimize tracking of mud and dirt onto public roads.
- (e) 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.
- (f) Divert runoff around exposed soils.
- (g) 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.
- (h) Construct and maintain perimeter protection and locate erodible stockpiles away from storm drain inlets, waterways, and drainage channels.
- (i) 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.

(j) 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.

(k) Do not discharge concrete wastewater near or into waterways or wetlands. Submit proposed washout areas to the CO for approval.

(l) Discharges of dewatering water may not cause the formation of a visible sheen on the water surface, or visible oily deposits on the bottom or shoreline of the receiving water.

**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 the text of this Subsection and substitute the following:

(a) Inspect the following areas of the project:

- (1) All areas where soil has been disturbed and that have 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 and discharges from the site;
- (5) All locations where temporary stabilization measures have been implemented; and
- (6) All points of discharge of dewatering water when dewatering is required. Follow inspection requirements in the CGP and in this Subsection.

(b) Visually monitor daily all points where stormwater is discharged off site into a receiving water, constructed or natural site drainage feature, or storm drain inlet. If there is visible turbidity or a sheen in the discharge, stop all earth disturbing construction activities and notify the CO immediately.

(c) Conduct turbidity sampling, as described below, using a calibrated turbidity meter. Calibrate prior to sampling and on the same day of sampling.

Identify all sampling locations in the SWPPP and record sampling results in the inspection forms.

Collect a sample once per week at all points where stormwater is discharged off site into a receiving water, constructed or natural site drainage feature, or storm drain inlet. For

stormwater discharges to surface waters, collect the sample before the discharge enters the surface water.

Collect a sample daily at all points where dewatering water is discharged off site. Collect the sample before the discharge enters a receiving water, constructed or natural site drainage feature, or storm drain inlet.

**(1)** If turbidity of the stormwater or dewatering water discharge is less than 25 Nephelometric Turbidity unit (NTU), no further monitoring is required.

**(2)** If turbidity exceeds 25 NTU or higher, stop all earth disturbing construction activities and notify CO immediately. Take immediate action to address cause of exceedance. Once monitoring results show turbidity is less than 25 NTU, construction activities can resume. Continue to monitor until the stormwater or dewatering water discharge is measured at less than 25 NTU.

Submit compiled dewatering water monitoring results to the CO quarterly, by the 15th of April, July, October, and January. Once approved, upload results to the EPA website by the 30th of the month.

Furnish completed inspection reports to the CO within 24-hours after performing an inspection.

**(d)** Inspections may be temporarily reduced or suspended in accordance with the CGP and the following conditions:

**(1)** Inspections may be temporarily reduced to once every 14 days for the first month and then once every 30 days, when construction is temporarily inactive and if all disturbed areas have been either permanently or temporarily stabilized.

**(2)** Inspections may be temporarily reduced to once every 14 days for the first month for linear construction sites as defined by the CGP when portions of the site have undergone final stabilization. After the first month, inspect once more within 24 hours of a storm event of 0.25 inches or greater within a 24-hour period or when there is a discharge from snowmelt from a storm event that produces 3.25 inches or more of snow within a 24-hour period as determined by measurements of snowfall at the site or from local weather information. If there are no issues or evidence of stabilization problems, further inspections can be suspended in those areas. If issues are identified, resume monthly inspections until final stabilization is visually confirmed following a storm event of 0.25 inches or greater within a 24-hour period.

**(3)** If the project is suspending construction activities due to frozen conditions, inspections may be suspended if all disturbed areas have been stabilized and only if discharges are unlikely due to continuous frozen conditions that will last a minimum of 3 months based on historic seasonal averages. If unexpected weather conditions occur that may result in discharges from the site, inspections must immediately resume in accordance with the CGP.

(4) If the project is continuing construction activities during frozen conditions, inspections may be reduced to once every 30 days if a discharge is unlikely due to continuous frozen conditions that will last a minimum of 3 months based on historic seasonal averages. All areas not being disturbed by construction activities must be stabilized in accordance with the CGP.

Document the reason for the reduction in inspection frequency, locations (if applicable), and beginning and end dates in the SWPPP. Resume the normal inspection schedule in accordance with the CGP when above conditions are not met for reduced or suspended inspection frequency.

**157.15 Maintenance and Cleanup.** Delete the text of 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; and
- (b) Begin corrective maintenance of sediment and erosion control devices immediately and complete by the close of the next business day. If it is not feasible to complete the work in that timeframe, document in the inspection report why it is not feasible. Complete maintenance and corrective action 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.

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<b>DIVISION 200 EARTHWORK</b>
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**Section 201. — CLEARING AND GRUBBING**

01/01/14– FP-14

**Measurement**

**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**

**204.05 Conserved Topsoil.** Delete this Subsection.

**204.06 Roadway Excavation.** Add the following:

Notify the CO at least 14 days prior to excavation of landslide material at Site 2 for CO to be present during the work.

Stockpile excavated material within the temporary construction easement and no closer than 15 feet from the top of the permanent 1V:1.5H slope at Site 2.

Excavate slope grade at Site 2 by working from the top of the slope to the bottom of the slope.

**204.10 Embankment Construction.** Amend as follows:

Delete the first paragraph and substitute the following:

Incorporate only suitable roadway excavation material into the embankment. When the supply of suitable roadway excavation material is exhausted, furnish select borrow to complete the embankment.

Add the following to paragraph (b):

Construct the top 12 inches of the embankment with select borrow.

**204.11(c) Less than 50 percent retained on a No. 4 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 from the top 6 inches 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  $\pm 0.05$  foot of the design line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within  $\pm 0.10$  foot of the design line and grade. Finish ditch cross-sections to within  $\pm 0.10$  foot of the design line and grade. Maintain proper ditch drainage.

Special Contract Requirements

Project: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



**(2) Conventional survey method.** Finish roadbeds that are compacted according to Subsection 204.11(b) and (c) to within  $\pm 0.05$  foot of the staked line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within  $\pm 0.10$  foot of the staked line and grade. Finish ditch cross-sections to within  $\pm 0.10$  foot 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).

<p><b>DIVISION 400</b> <b>ASPHALT PAVEMENTS</b> <b>AND SURFACE TREATMENTS</b></p>
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**Section 407. — CHIP SEAL**

08/01/14-FP14

**Construction Requirements**

**407.04 Composition.** Delete this Subsection.

**407.06 Surface Preparation.** Add the following:

**(d) Existing aggregate surfaces.**

- (1)** Immediately prior to applying the first course of chip seal aggregate, remove irregularities, shape to a uniform surface and compact existing aggregate surfaces according to Subsection 302.05.
- (2)** When using an emulsified asphalt, make the surface damp.
- (3)** When using an asphalt binder, dry the surface.

<b>DIVISION 600</b> <b>INCIDENTAL CONSTRUCTION</b>
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**Section 602. — CULVERTS AND DRAINS**

06/15/22-FP14

**Construction Requirements**

**602.04 Laying Concrete Pipe and Precast Concrete Box Culverts. Amend as follows:**

Delete paragraph (b)(2) and substitute the following:

(2) Align the pipe sections. Force the joints home using the pipe manufacturer's recommended procedure. Do not drive or ram by hand or machinery.

Delete the last paragraph and substitute the following:

Use supplemental concrete pipe ties when laying concrete pipe in grades 5 percent or steeper. Install supplemental concrete pipe ties on the last downstream pipe-to-pipe joint and at the downstream pipe-to-end section joint, if present. Block the last day's run to prevent creep.

## Section 625. — TURF ESTABLISHMENT

08/01/14-FP14

### Material

**625.02** Add the following to the material list:

Biotic Soil Amendment	713.22
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### Construction Requirements

**625.03 General.** Delete the text of this Subsection and substitute the following:

Apply turf establishment to finished slopes and ditches between March 1 through May 15 and September 1 through October 1. Do not apply turf establishment during windy weather or when the ground is excessively wet, frozen, snow covered, extremely dry, cloddy, hard pan, or not friable.

**625.05 Watering.** Delete the text of this Subsection.

**625.07 Seeding.** Delete text of this Subsection.

**625.07A Turf Establishment, Hydraulic Method.** (Added Subsection).

**(a) Turf establishment mixture.** The permanent turf establishment mixture is composed of the following components:

<u>Component</u>	<u>Application Rate</u>
Seed	25 pounds per live seed per slurry unit
Bonded fiber mulch (BFM)	475 pounds per slurry unit (includes tracer as recommended by the manufacturer)
Biotic Soil Amendment (BSA)	1250 pounds per slurry unit

A slurry unit consists of approximately 1000 gallons of water plus the specified turf establishment material. Four slurry units contain the material to cover one acre.

**(b) Equipment.** Apply turf establishment mixture with hydro-type equipment capable of providing a uniform application using water as the carrying agent. Do not use hydro-type equipment with gear driven pumps, which can damage the seed. Equipment must be capable of reaching cut slopes a minimum of 100 feet high. Seed areas inaccessible to seeding equipment by hand.

**(c) Application.** Do not blend soil amendments before placing in the hydro-type equipment. Mix and apply the slurry mixture products in accordance with the manufacturer's recommendations. Apply the slurry mixture within 30 minutes of adding the seed to the slurry mixture. Apply in two applications placing no more than 50 percent of the mixture at any one application. Adjust application rate to avoid sloughing or washing away the mixture on steep slopes. Apply from opposite directions, to ensure the highest level of coverage, effectiveness, and performance. Moisten stabilization areas prior to applying the slurry mixture but do not apply slurry mixture during periods of excessive rainfall.

**625.08 Mulching.** Delete the text of this Subsection.

**Section 633. — PERMANENT TRAFFIC CONTROL**

08/01/14-FP14

**Construction Requirements****633.04 Sign Posts.** Add the following:

Fabricate sign posts from wood.

**633.05(a)(1) Panels.** Amend as follows:

Delete the sixth paragraph and substitute the following:

Use retroreflective sheeting as specified and according to ASTM D4956. For roadside signs, use Type III, IV, VIII, IX, or XI prismatic retroreflective sheeting. Use fluorescent yellow-green sheeting for school crossing signs.

Add the following:

Fabricate sign panels from aluminum.

**Section 634. — PERMANENT PAVEMENT MARKINGS**

04/02/21-FP14

**Measurement**

**634.12** Add the following to the second paragraph:

When two coats of paint are required, measure each coat.

## 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:

Hardware	718.06
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: WA FLAP JEFFER 150009(1), Undi Road Bypass Improvements



**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.

### **Measurement**

**635.24** Add the following:

Measure flaggers for each hour a person is actually flagging.

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<b>DIVISION 700</b> <b>MATERIAL</b>
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## Section 702. — ASPHALT MATERIAL

7/15/16-FP14

**702.02 Emulsified Asphalt.** Delete paragraph (a) and substitute the following:

**(a) Polymer modified high float emulsion for chip seals.** Use a solid or latex polymer added either to the asphalt binder or during the emulsification process. Conform to AASHTO M 316, except as follows:

- |  |                  |
|--|------------------|
| (1) Residue by distillation, AASHTO T 59                       | 65 min.          |
| (2) Viscosity, Saybolt Furol, 122°F (50°C), sfs                | 50 min.          |
| (3) Sieve test, AASHTO T 59                                    | 0.10 max.        |
| (4) Demulsibility, percent, AASHTO T 59                        | 40 min.          |
| (5) Test on residue from distillation:                         |                  |
| (a) Penetration, 77 °F (25 °C), dmm, AASHTO T 49               | 90 min. 200 max. |
| (b) Ductility, 77 °F (25 °C), cm, AASHTO T 51                  | 75 min.          |
| (c) Float, 140 °F (60 °C), sec, AASHTO T 50                    | 1200 min.        |
| (d) Elastic Recovery, 50 °F (10 °C), 5 cm/min, AASHTO T 301    | 58 percent min.  |
| (e) Force ratio, f2/f1, 39.2 °F (4 °C), 5 cm/min, AASHTO T 300 | 0.3 min.         |

**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**

<b>Percent of Rock by Mass</b>	<b>Range of Intermediate Dimensions,<sup>(1)</sup> inches (millimeters)</b>	<b>Range of Rock Mass,<sup>(2)</sup> pounds (kilograms)</b>
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”:

Common yarrow, ( <i>Achillea millefolium</i> )	0.4 percent
Rough bentgrass, ( <i>Agrostis scabra</i> )	5.2 percent
Red columbine, ( <i>Aquilegia formosa</i> )	7.2 percent
California poppy, ( <i>Eschscholtzia californica</i> )	10.0 percent
Creeping red fescue, ( <i>Festuca rubra</i> sp. <i>rubra</i> )	64.0 percent
Pacific lupine, ( <i>Lupinus lepidus</i> )	7.2 percent
Crimson clover, ( <i>Trifolium incarnatum</i> )	6.0 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”.)

### 713.05 Mulch. Add the following:

**(g) Bonded fiber matrix hydromulch.** Use Bonded Fiber Mulch (BFM), that is 100 percent biodegradable and is composed of 100 percent recycled, thermally refined (within a pressurized vessel) virgin wood fibers, crimped interlocking biodegradable fibers, mineral activators and wetting agents (including high-viscosity colloidal polysaccharides, cross-linked biopolymers, and water absorbents). The BFM shall be phytosanitized, free from plastic netting, and when cured forms an intimate bond with the soil surface to create a continuous, porous, absorbent and flexible erosion resistant blanket that allows for rapid germination and accelerated plant growth.

### 713.12 Fiber Rolls and Socks. Amend as follows:

Add the following before paragraph (a):

**Table 713-2A**

Size of Fiber Rolls	Slope Steepness
9-inch diameter	2H:1V or less
12-inch diameter	Greater than 2H:1V

**(a) Excelsior fiber rolls.** Delete text of first sentence and substitute the following:

Provide excelsior (certified weed free) logs that consist of drainage filter made of curled aspen wood excelsior and rolled into a cylindrical shape with a consistent width of fibers evenly distributed throughout the cylinder. Provide logs with a minimum of 9 inches and a maximum of 12 inches in diameter with a minimum of 3 pounds of wood fiber per 12 inches encased in 100 percent biodegradable netting. Certify all material in the log as weed free. Submit a sample log for approval to the CO two weeks prior to the installation.

**(b) Straw fiber rolls.** Delete the text of paragraph (b).

**(c) Coir rolls.** Delete the text of paragraph (c) and substitute the following:

Furnish coir fiber rolls that are 100 percent coconut fiber, encased in 100 percent biodegradable netting.

**713.22 Biotic Soil Amendment.** (Added Subsection).

The biotic soil amendment (BSA) shall have a minimum of 90 percent organic matter (organic growth medium) and contain other materials designed to improve seed germination, vegetation establishment and overall soil health. In addition to organic growth medium BSA shall include mycorrhizal fungi and a minimum of three of the following ingredients:

- (a)** Biochar;
- (b)** Humus/Humic Acid;
- (c)** Porous Ceramics or Water-holding Organic Polymers;
- (d)** Seaweed Extract;
- (e)** Beneficial Bacteria; and
- (f)** Micronutrients.

The Contractor shall provide test results dated within 3 years prior to the date of application from an independent, accredited laboratory that has been recognized by an accrediting organization to test and evaluate products to product safety standards. The independent, accredited lab shall be free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process. Test results shall show that the product meets the following table requirements:

**Table 713-7  
Biotic Soil Amendment Requirements**

<b>BSA Properties</b>	<b>Test Methods</b>	<b>Requirements</b>
Physical		
Organic Matter	ASTM D586	90% minimum
pH	ASTM D1293	5.0 – 8.5
C:N Ratio	ASTM E1508	10:1 minimum, 100:1 maximum
Water-Holding Capacity <sup>(1)</sup>	ASTM D7367	400% minimum
Moisture Content	ASTM 2974	10% minimum, 50% maximum
Environmental		
Acute Toxicity	EPA method 2021.0	Non-toxic
EPA Metal Limits	SW846-6020 04.06	Pass
Performance		
Growth Enhancement	ASTM D7322	500% minimum

(1) Water holding capacity of the prepackaged material without the addition of ancillary amendments.

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## **P E R M I T S**

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**National Pollutant Discharge Elimination System (NPDES)  
Construction General Permit (CGP) for Stormwater Discharges from  
Construction Activities**

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA), as amended by the Water Quality Act of 1987, P.L. 100-4, "operators" of construction activities (defined in Appendix A) that meet the requirements of Part 1.1 of this National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP), are authorized to discharge pollutants in accordance with the effluent limitations and conditions set forth herein. Permit coverage is required from the "commencement of construction activities" (see Appendix A) until one of the conditions for terminating CGP coverage has been met (see Part 8.2).

This permit becomes effective on 12:00 am, February 17, 2022.

This permit and the authorization to discharge expire at 11:59pm, February 16, 2027.

Signed and issued this 18 day of January 2022

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**CONTENTS**

<b>1</b>	<b>How to Obtain Coverage Under the Construction General Permit (CGP).....</b>	<b>1</b>
1.1	Eligibility Conditions .....	1
1.2	Types of Discharges Authorized .....	3
1.3	Prohibited Discharges.....	4
1.4	Submitting your Notice of Intent (NOI).....	5
1.5	Requirement to Post a Notice of Your Permit Coverage.....	7
<b>2</b>	<b>Technology-Based Effluent Limitations.....</b>	<b>8</b>
2.1	General Stormwater Control Design, Installation, and Maintenance Requirements.....	8
2.2	Erosion and Sediment Control Requirements.....	10
2.3	Pollution Prevention Requirements .....	17
2.4	Construction Dewatering Requirements.....	22
<b>3</b>	<b>Water Quality-Based Effluent Limitations.....</b>	<b>23</b>
3.1	General Effluent Limitation to Meet Applicable Water Quality Standards .....	23
3.2	Water Quality-based Conditions for Sites Discharging to Sensitive Waters <sup>44</sup> .....	23
3.3	Water quality-based conditions For sites discharging To Sensitive Waters From Construction Dewatering activities .....	24
<b>4</b>	<b>Site Inspection Requirements .....</b>	<b>28</b>
4.1	Person(s) Responsible for Inspecting Site .....	28
4.2	Frequency of Inspections.....	28
4.3	Increase in Inspection Frequency for Certain Sites. ....	29
4.4	Reductions in Inspection Frequency .....	30
4.5	Areas that Must Be Inspected .....	31
4.6	Requirements for Inspections .....	32
4.7	Inspection Report.....	33
4.8	Inspections By EPA .....	34
<b>5</b>	<b>Corrective Actions .....</b>	<b>34</b>
5.1	Conditions Triggering Corrective Action.....	34
5.2	Corrective Action Deadlines .....	35
5.3	Corrective Action Required by EPA .....	36
5.4	Corrective Action Log .....	36
<b>6</b>	<b>Stormwater Team Formation/ Staff Training Requirements .....</b>	<b>36</b>
6.1	Stormwater Team.....	36
6.2	General Training Requirements For Stormwater Team Members .....	37
6.3	Training Requirements For Persons Conducting Inspections .....	37
6.4	Stormwater Team's Access To Permit Documents .....	38

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<b>7</b>	<b>Stormwater Pollution Prevention Plan (SWPPP)</b>	<b>38</b>
7.1	General Requirements	38
7.2	SWPPP Contents	38
7.3	On-Site Availability of Your SWPPP	46
7.4	SWPPP Modifications	46
<b>8</b>	<b>How to Terminate Coverage</b>	<b>47</b>
8.1	Minimum Information Required in NOT	47
8.2	Conditions for Terminating CGP Coverage	47
8.3	How to Submit Your NOT	48
8.4	Deadline for Submitting the NOT	49
8.5	Effective Date of Termination of Coverage	49
<b>9</b>	<b>Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories</b>	<b>49</b>
	<b>Appendix A: Definitions</b>	<b>A-1</b>
	<b>Appendix B: Permit Areas Eligible for Coverage and EPA Regional Addresses</b>	<b>B-1</b>
	<b>Appendix C: Small Construction Waivers and Instructions</b>	<b>C-1</b>
	<b>Appendix D: Eligibility Procedures Relating to Threatened &amp; Endangered Species Protection</b>	<b>D-1</b>
	<b>Appendix E: Historic Property Screening Process</b>	<b>E-1</b>
	<b>Appendix F: Buffer Requirements</b>	<b>F-1</b>
	<b>Appendix G: Standard Permit Conditions</b>	<b>G-1</b>
	<b>Appendix H: Notice of Intent (NOI) Form and Instructions</b>	<b>H-1</b>
	<b>Appendix I: Notice of Termination (NOT) Form and Instructions</b>	<b>I-1</b>
	<b>Appendix J: Suggested Format for Request for Chemical Treatment</b>	<b>J-1</b>
	<b>Appendix K: Turbidity Benchmark Monitoring Report Form</b>	<b>K-1</b>

## **1 HOW TO OBTAIN COVERAGE UNDER THE CONSTRUCTION GENERAL PERMIT (CGP)**

To be covered under this permit, you must meet the eligibility conditions and follow the requirements for obtaining permit coverage in this Part.

### **1.1 ELIGIBILITY CONDITIONS**

**1.1.1** You are an “operator” of a construction site for which discharges will be covered under this permit. For the purposes of this permit and in the context of stormwater discharges associated with construction activity, an “operator” is any party associated with a construction project that meets either of the following two criteria:

- a.** The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- b.** The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.

Where there are multiple operators associated with the same project, all operators must obtain permit coverage.<sup>1</sup> Subcontractors generally are not considered operators for the purposes of this permit.

#### **1.1.2 Your site’s construction activities:**

- a.** Will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale (as defined in Appendix A) that will ultimately disturb one or more acres of land; or
- b.** Have been designated by EPA as needing permit coverage under 40 CFR § 122.26(a)(1)(v) or 40 CFR § 122.26(b)(15)(ii);

**1.1.3** Your site is located in an area where EPA is the permitting authority and where coverage under this permit is available (see Appendix B);

#### **1.1.4 Discharges from your site are not:**

- a.** Already covered by a different NPDES permit for the same discharge; or
- b.** In the process of having coverage under a different NPDES permit for the same discharge denied, terminated, or revoked.<sup>2, 3</sup>

**1.1.5** You can demonstrate you meet one of the criteria in the Endangered Species Protection section of the Notice of Intent (NOI) that you submit for coverage under this permit, per Part 1.4, with respect to the protection of Federally listed endangered or threatened species and Federally designated critical habitat under the Endangered Species Act

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<sup>1</sup> If the operator of a “construction support activity” (see Part 1.2.1c) is different than the operator of the main site, that operator must also obtain permit coverage. See Part 7.1 for clarification on the sharing of permit-related functions between and among operators on the same site and for conditions that apply to developing a SWPPP for multiple operators associated with the same site.

<sup>2</sup> Parts 1.1.4a and 1.1.4b do not include sites currently covered under the 2017 CGP that are in the process of obtaining coverage under this permit, nor sites covered under this permit that are transferring coverage to a different operator.

<sup>3</sup> Notwithstanding a site being made ineligible for coverage under this permit because it falls under the description of Parts 1.1.4a or 1.1.4b, above, EPA may waive the applicable eligibility requirement after specific review if it determines that coverage under this permit is appropriate.

(ESA). If the EPA Regional Office grants you a waiver from electronic reporting per Part 1.4.2, you must complete the ESA worksheet in Appendix D to demonstrate you meet one of the criteria and submit it with your paper NOI (Appendix I).

- 1.1.6** You have completed the screening process in Appendix E relating to the protection of historic properties; and
- 1.1.7** You have complied with all requirements in Part 9 imposed by the applicable State, Indian Tribe, or Territory in which your construction activities and/or discharge will occur.
- 1.1.8** For "new sources" (as defined in Appendix A) only:
  - a.** EPA has not, prior to authorization under this permit, determined that discharges from your site will not meet applicable water quality standards. Where such a determination is made prior to authorization, EPA may notify you that an individual permit application is necessary. However, EPA may authorize your coverage under this permit after you have included appropriate controls and implementation procedures designed to bring your discharge into compliance with this permit, specifically the requirement to meet water quality standards. In the absence of information demonstrating otherwise, EPA expects that compliance with the requirements of this permit, including the requirements applicable to such discharges in Part 3, will result in discharges that meet applicable water quality standards.
  - b.** Discharges from your site to a Tier 2, Tier 2.5, or Tier 3 water<sup>4</sup> will not lower the water quality of the applicable water. In the absence of information demonstrating otherwise, EPA expects that compliance with the requirements of this permit, including the requirements applicable to such discharges in Part 3.2, will result in discharges that will not lower the water quality of such waters.
- 1.1.9** If you plan to add "cationic treatment chemicals" (as defined in Appendix A) to stormwater and/or authorized non-stormwater prior to discharge, you may not submit your NOI until you notify your applicable EPA Regional Office (see Appendix J) in advance and the EPA Regional Office authorizes coverage under this permit after you have included appropriate controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will result in discharges that meet applicable water quality standards.

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<sup>4</sup> Note: Your site will be considered to discharge to a Tier 2, Tier 2.5, or Tier 3 water if the first receiving water to which you discharge is identified by a State, Tribe, or EPA as a Tier 2, Tier 2.5, or Tier 3 water. For discharges that enter a storm sewer system prior to discharge, the first receiving water to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system. The current list of Tier 2, Tier 2.5, and Tier 3 waters located in the areas eligible for coverage under this permit can be found at <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates>. You can also use EPA's Discharge Mapping Tool (<https://www.epa.gov/npdes/epas-stormwater-discharge-mapping-tools>) to assist you in identifying whether any receiving waters to which you discharge are listed as impaired (and the pollutant for which it is impaired) and whether an approved total maximum daily load (TMDL) exists for that waterbody.

**1.2 TYPES OF DISCHARGES AUTHORIZED<sup>5</sup>**

**1.2.1** The following stormwater discharges are authorized under this permit provided that appropriate stormwater controls are designed, installed, and maintained (see Parts 2 and 3):

- a.** Stormwater discharges, including stormwater runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activity under 40 CFR § 122.26(b)(14) or § 122.26(b)(15)(i);
- b.** Stormwater discharges designated by EPA as needing a permit under 40 CFR § 122.26(a)(1)(v) or § 122.26(b)(15)(ii);
- c.** Stormwater discharges from on or off-site construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that:
  - i.** The support activity is directly related to the construction site required to have permit coverage for stormwater discharges;
  - ii.** The support activity is not a commercial operation, nor does it serve multiple unrelated construction sites;
  - iii.** The support activity does not continue to operate beyond the completion of the construction activity at the site it supports; and
  - iv.** Stormwater controls are implemented in accordance with Part 2 and Part 3 for discharges from the support activity areas; and
- d.** Stormwater discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining.

**1.2.2** The following non-stormwater discharges associated with your construction activity are authorized under this permit provided that, with the exception of water used to control dust and to irrigate vegetation in stabilized areas, these discharges are not routed to areas of exposed soil on your site and you comply with any applicable requirements for these discharges in Parts 2 and 3:

- a.** Discharges from emergency fire-fighting activities;
- b.** Fire hydrant flushings;
- c.** Landscape irrigation;
- d.** Water used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes;
- e.** Water used to control dust;
- f.** Potable water including uncontaminated water line flushings;

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<sup>5</sup> See "Discharge" as defined in Appendix A. Note: Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA Section 402(k) by disclosure to EPA, State, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the SWPPP, or during an inspection.



- g.** External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances (as defined in Appendix A) (e.g., paint or caulk containing polychlorinated biphenyls (PCBs));
  - h.** Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used. You are prohibited from directing pavement wash waters directly into any receiving water, storm drain inlet, or constructed or natural site drainage features, unless the feature is connected to a sediment basin, sediment trap, or similarly effective control;
  - i.** Uncontaminated air conditioning or compressor condensate;
  - j.** Uncontaminated, non-turbid discharges of ground water or spring water;
  - k.** Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
  - l.** Uncontaminated construction dewatering water<sup>6</sup> discharged in accordance with Part 2.4.
- 1.2.3** Also authorized under this permit are discharges of stormwater listed above in Part 1.2.1, or authorized non-stormwater discharges listed above in Part 1.2.2, commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

### **1.3 PROHIBITED DISCHARGES<sup>7</sup>**

The discharges listed in this Part are prohibited outright or authorized only under the identified conditions. To prevent the discharges in Parts 1.3.1 through 1.3.5, operators must comply with the applicable pollution prevention requirements in Part 2.3 or ensure the discharge is authorized by another NPDES permit consistent with Part 1.2.3 for commingled discharges.

- 1.3.1** Wastewater from washout of concrete, unless managed by an appropriate control as described in Part 2.3.4;
- 1.3.2** Wastewater from washout and/or cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
- 1.3.3** Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 1.3.4** Soaps, solvents, or detergents used in vehicle and equipment washing or external building washdown; and
- 1.3.5** Toxic or hazardous substances from a spill or other release.

<sup>6</sup> EPA notes that operators may need to comply with additional procedures to verify that the dewatering discharge is uncontaminated. Operators should review Part 9 to determine if any of these requirements apply to their discharge and should ensure that they have complied with any State, Tribal, or local dewatering requirements that apply.

<sup>7</sup> EPA includes these prohibited non-stormwater discharges here as a reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.2.2. Any unauthorized non-stormwater discharges must be covered under an individual permit or alternative general permit.

## 1.4 SUBMITTING YOUR NOTICE OF INTENT (NOI)

All “operators” (as defined in Appendix A) associated with your construction site who meet the Part 1.1 eligibility conditions, and who seek coverage under this permit, must submit to EPA a complete and accurate NOI in accordance with the deadlines in Table 1 prior to commencement of construction activities (as defined in Appendix A).

**Exception:** If you are conducting construction activities in response to a public emergency (e.g., mud slides, earthquake, extreme flooding conditions, widespread disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, you may discharge on the condition that a complete and accurate NOI is submitted within 30 calendar days after commencing construction activities (see Table 1) establishing that you are eligible for coverage under this permit. You must also provide documentation in your Stormwater Pollution Prevention Plan (SWPPP) to substantiate the occurrence of the public emergency pursuant to Part 7.2.3i.

### 1.4.1 Prerequisite for Submitting Your NOI

You must develop a SWPPP consistent with Part 7 before submitting your NOI for coverage under this permit.

### 1.4.2 How to Submit Your NOI

You must use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit your NOI for coverage under the 2022 CGP unless you received a waiver from your applicable EPA Regional Office.

To access NeT, go to <https://cdx.epa.gov/cdx>.

Waivers from electronic reporting may be granted based on one of the following conditions:

- a.** If your operational headquarters is physically located in a geographic area (i.e., ZIP code or census tract) that is identified as under-served for broadband Internet access in the most recent report from the Federal Communications Commission; or
- b.** If you have limitations regarding available computer access or computer capability.

If the EPA Regional Office grants you approval to use a paper NOI, and you elect to use it, you must complete the form in Appendix H.

### 1.4.3 Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage

Table 1 provides the deadlines for submitting your NOI and the official start date of your permit coverage, which differ depending on when you commence construction activities.

**Table 1 NOI Submittal Deadlines and Official Start Date for Permit Coverage.**

<b>Type of Operator</b>	<b>NOI Submittal Deadline<sup>8</sup></b>	<b>Permit Authorization Date<sup>9</sup></b>
<b>Operator of a new site</b> (i.e., a site where construction activities commence on or after February 17, 2022)	At least 14 calendar days before commencing construction activities.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.
<b>Operator of an existing site</b> (i.e., a site with 2017 CGP coverage where construction activities commenced prior to February 17, 2022)	No later than May 18, 2022.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.  Provided you submit your NOI no later than May 18, 2022, your authorization under the 2017 CGP is automatically continued until you have been granted coverage under this permit or an alternative NPDES permit, or coverage is otherwise terminated.
<b>New operator of a permitted site</b> (i.e., an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site that is either a "new site" or an "existing site")	At least 14 calendar days before the date the transfer to the new operator will take place.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.
<b>Operator of an "emergency-related project"</b> (i.e., a project initiated in response to a public emergency (e.g., mud slides, earthquake, extreme flooding conditions, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services)	No later than 30 calendar days after commencing construction activities.	You are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.

<sup>8</sup> If you miss the deadline to submit your NOI, any and all discharges from your construction activities will continue to be unauthorized under the CWA until they are covered by this or a different NPDES permit. EPA may take enforcement action for any unpermitted discharges that occur between the commencement of construction activities and discharge authorization.

<sup>9</sup> Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

#### **1.4.4 Modifying your NOI**

If after submitting your NOI you need to correct or update any fields, you may do so by submitting a "Change NOI" form using NeT. Waivers from electronic reporting may be granted as specified in Part 1.4.2. If the EPA Regional Office has granted you approval to submit a paper NOI modification, you may indicate any NOI changes on the same NOI form in Appendix H.

When there is a change to the site's operator, the new operator must submit a new NOI, and the previous operator must submit a Notice of Termination (NOT) form as specified in Part 8.3.

The following modifications to an NOI form will result in a 14-day review process:

- Changes to the name of the operator;
- Changes to the project or site name;
- Changes to the estimated area to be disturbed;
- Changes to the name of the receiving water<sup>10</sup>, or additions to the applicable receiving waters;
- Changes to eligibility information related to endangered species protection or historic preservation;
- Changes to information provided related to the use of chemical treatment at your site; and
- Changes to answers provided regarding the demolition of structures over 10,000 square feet of floor space built or renovated before January 1, 1980.

During the 14-day review process, you may continue to operate based on the information provided in your original NOI, but you must wait until the review period has ended before you may commence or continue activities on any portion of your site that would be affected by any of the above modifications, unless EPA notifies you that the authorization is delayed or denied.

#### **1.4.5 Your Official End Date of Permit Coverage**

Once covered under this permit, your coverage will last until the date that:

- a. You terminate permit coverage consistent with Part 8; or
- b. You receive permit coverage under a different NPDES permit or a reissued or replacement version of this permit after expiring on February 16, 2027; or
- c. You fail to submit an NOI for coverage under a reissued or replacement version of this permit before the deadline for existing construction sites where construction activities continue after this permit has expired.

#### **1.5 REQUIREMENT TO POST A NOTICE OF YOUR PERMIT COVERAGE**

You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so it is visible from the public road that is nearest to the active part of the construction

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<sup>10</sup> As defined in Appendix A, a "receiving water" is "a "Water of the United States" as defined in 40 CFR § 122.2 into which the regulated stormwater discharges.

site, and it must use a font large enough to be readily viewed from a public right-of-way.<sup>11</sup> At a minimum, the notice must include:

- a. The NPDES ID (i.e., permit tracking number assigned to your NOI and the EPA webpage where a copy of the NOI can be found (<https://permitsearch.epa.gov/epermit-search/ui/search>));
- b. A contact name and phone number for obtaining additional construction site information;
- c. The Uniform Resource Locator (URL) for the SWPPP (if available), or the following statement: "If you would like to obtain a copy of the Stormwater Pollution Prevention Plan (SWPPP) for this site, contact the EPA Regional Office at [include the appropriate CGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>];" and
- d. The following statement "If you observe indicators of stormwater pollutants in the discharge or in the receiving water, contact the EPA through the following website: <https://www.epa.gov/enforcement/report-environmental-violations>."

## 2 TECHNOLOGY-BASED EFFLUENT LIMITATIONS

You must comply with the following technology-based effluent limitations in this Part for all authorized discharges.<sup>12</sup>

### 2.1 GENERAL STORMWATER CONTROL DESIGN, INSTALLATION, AND MAINTENANCE REQUIREMENTS

You must design, install, and maintain stormwater controls required in Parts 2.2, 2.3, and 2.4 to minimize the discharge of pollutants in stormwater from construction activities.<sup>13</sup> To meet this requirement, you must:

#### 2.1.1 Account for the following factors in designing your stormwater controls:

- a. The expected amount, frequency, intensity, and duration of precipitation;<sup>14</sup>
- b. The nature of stormwater runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. You must design stormwater controls to control stormwater volume, velocity, and peak flow rates to minimize discharges of pollutants in stormwater and to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and
- c. The soil type and range of soil particle sizes expected to be present on the site.

<sup>11</sup> If the active part of the construction site is not visible from a public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.

<sup>12</sup> For each of the effluent limits in Part 2, as applicable to your site, you must include in your SWPPP (1) a description of the specific control(s) to be implemented to meet the effluent limit; (2) any applicable design specifications; (3) routine maintenance specifications; and (4) the projected schedule for installation/implementation. See Part 7.2.6.

<sup>13</sup> The permit does not recommend or endorse specific products or vendors.

<sup>14</sup> Stormwater controls must be designed using the most recent data available to account for recent precipitation patterns and trends.

If your site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, you should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient stormwater controls, and other mitigation measures may help minimize impacts from stormwater discharges from such major storm events.

**2.1.2 Design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications.<sup>15</sup>**

**2.1.3 Complete installation of stormwater controls by the time each phase of construction activities has begun.**

- a. By the time construction activity in any given portion of the site begins, install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities.<sup>16</sup>
- b. Following the installation of these initial controls, install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.

**2.1.4 Ensure all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.**

- a. Comply with any specific maintenance requirements for the stormwater controls listed in this permit, as well as any recommended by the manufacturer.<sup>17</sup>
- b. If at any time you find that a stormwater control needs routine maintenance (i.e., minor repairs or other upkeep performed to ensure the site's stormwater controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control), you must immediately initiate the needed work, and complete such work by the close of the next business day. If it is infeasible to complete the routine maintenance by the close of the next business day, you must document why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance in your inspection report under Part 4.7.1c and complete such work no later than seven (7) calendar days from the time of discovery of the condition requiring maintenance.
- c. If you must repeatedly (i.e., three (3) or more times) make the same routine maintenance fixes to the same control at the same location, even if the fix can be completed by the close of the next business day, you must either:
  - i. Complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures in Part 5, including keeping any records

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<sup>15</sup> Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practices and must be explained in your SWPPP. You must also comply with any additional design and installation requirements specified for the effluent limits in Parts 2.2, 2.3, and 2.4.

<sup>16</sup> Note that the requirement to install stormwater controls prior to each phase of construction activities for the site does not apply to the earth disturbance associated with the actual installation of these controls. Operators should take all reasonable actions to minimize the discharges of pollutants during the installation of stormwater controls.

<sup>17</sup> Any departures from such maintenance recommendations made by the manufacturer must reflect good engineering practices and must be explained in your SWPPP.

of the condition and how it was corrected under Part 5.4; or

- ii. Document in your inspection report under Part 4.7.1c why the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix under this Part.<sup>18</sup>
- d. If at any time you find that a stormwater control needs a significant repair or that a new or replacement control is needed, you must comply with the corrective action deadlines for completing such work in in Part 5.2.1c.

## 2.2 EROSION AND SEDIMENT CONTROL REQUIREMENTS

You must implement erosion and sediment controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater from construction activities.

### 2.2.1 Provide and maintain natural buffers and/or equivalent erosion and sediment controls for discharges to any receiving waters that is located within 50 feet of the site's earth disturbances.

- a. **Compliance Alternatives.** For any discharges to receiving waters located within 50 feet of your site's earth disturbances, you must comply with one of the following alternatives:
  - i. Provide and maintain a 50-foot undisturbed natural buffer; or
  - ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or
  - iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

See Appendix F, Part F.2 for additional conditions applicable to each compliance alternative.

- b. **Exceptions.** See Appendix F, Part F.2 for exceptions to the compliance alternatives.

### 2.2.2 Direct stormwater to vegetated areas and maximize stormwater infiltration and filtering to reduce pollutant discharges, unless infiltration would be inadvisable due to the underlying geology (e.g., karst topography) and ground water contamination concerns, or infeasible due to site conditions.<sup>19</sup>

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<sup>18</sup> Such documentation could include, for example, that minor repairs completed within the required timeframe are all that is necessary to ensure that the stormwater control continues to operate as designed and installed and that the stormwater control remains appropriate for the flow reaching it.

<sup>19</sup> Operators should consider whether factors such as specific contaminant concerns from the construction site, the underlying soils or geology, hydrology, depth to the ground water table, or proximity to source water or wellhead protection area(s) make the site unsuitable for infiltrating construction stormwater. Site conditions that may be of particular concern include proximity to: a current or future drinking water aquifer; a drinking water well or spring (including private/household wells); highly conductive geology such as karst; known pollutant hot spots, such as hazardous waste sites, landfills, gas stations, brownfields; an on-site sewage system or underground storage tank; or soils that do not allow for infiltration. Operators may find it helpful to consult EPA's [Drinking Water Mapping Application to Protect Source Waters \(DWMAPS\)](#). DWMAPS is an online mapping tool that can be used to locate drinking water providers, potential sources of contamination, polluted waterways, and information on protection initiatives in the site area.

### 2.2.3 Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas.<sup>20</sup>

- a. The perimeter control must be installed upgradient of any natural buffers established under Part 2.2.1, unless the control is being implemented pursuant to Part 2.2.1 a.ii-iii;
- b. To prevent stormwater from circumventing the edge of the perimeter control, install the perimeter control on the contour of the slope and extend both ends of the control up slope (e.g., at 45 degrees) forming a crescent rather than a straight line;
- c. After installation, to ensure that perimeter controls continue to work effectively:
  - i. Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control; and
  - ii. After a storm event, if there is evidence of stormwater circumventing or undercutting the perimeter control, extend controls and/or repair undercut areas to fix the problem.
- d. **Exception.** For areas at "linear construction sites" (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site.

### 2.2.4 Minimize sediment track-out.

- a. Restrict vehicle use to properly designated exit points;
- b. Use appropriate stabilization techniques<sup>21</sup> at all points that exit onto paved roads;
  - i. **Exception:** Stabilization is not required for exit points at linear utility construction sites that are used only episodically and for very short durations over the life of the project, provided other exit point controls<sup>22</sup> are implemented to minimize sediment track-out;
- c. Implement additional track-out controls<sup>23</sup> as necessary to ensure that sediment removal occurs prior to vehicle exit; and
- d. Where sediment has been tracked-out from your site onto paved roads, sidewalks, or other paved areas outside of your site, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out

<sup>20</sup> Examples of perimeter controls include filter berms; different types of silt fence such as wire-backed silt fence, super silt fence, or multi-layer geotextile silt fence; compost filter socks; gravel barriers; and temporary diversion dikes.

<sup>21</sup> Examples of appropriate stabilization techniques include the use of aggregate stone with an underlying geotextile or non-woven filter fabric, and turf mats.

<sup>22</sup> Examples of other exit point controls include preventing the use of exit points during wet periods; minimizing exit point use by keeping vehicles on site to the extent possible; limiting exit point size to the width needed for vehicle and equipment usage; using scarifying and compaction techniques on the soil; and avoiding establishing exit points in environmentally sensitive areas (e.g., *karst areas*; *steep slopes*).

<sup>23</sup> Examples of additional track-out controls include the use of wheel washing, rumble strips, and rattle plates.



sediment into any constructed or natural site drainage feature, storm drain inlet, or receiving water.<sup>24</sup>

**2.2.5 Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:<sup>25</sup>**

- a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any constructed or natural site drainage features, storm drain inlets, and areas where stormwater flow is concentrated;
- b. Install a sediment barrier along all downgradient perimeter areas of stockpiled soil or land clearing debris piles;<sup>26</sup>
- c. For piles that will be unused for 14 or more days, provide cover<sup>27</sup> or appropriate temporary stabilization (consistent with Part 2.2.14);
- d. You are prohibited from hosing down or sweeping soil or sediment accumulated on pavement or other impervious surfaces into any constructed or natural site drainage feature, storm drain inlet, or receiving water.

**2.2.6 Minimize dust.** On areas of exposed soil, minimize dust through the appropriate application of water or other dust suppression techniques to control the generation of pollutants that could be discharged in stormwater from the site.

**2.2.7 Minimize steep slope disturbances.** Minimize the disturbance of "steep slopes" (as defined in Appendix A).<sup>28</sup>

**2.2.8 Preserve native topsoil, unless infeasible.<sup>29</sup>**

**2.2.9 Minimize soil compaction.<sup>30</sup>** In areas of your site where final vegetative stabilization will occur or where infiltration practices will be installed:

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<sup>24</sup> Fine grains that remain visible (e.g., staining) on the surfaces of off-site streets, other paved areas, and sidewalks after you have implemented sediment removal practices are not a violation of Part 2.2.4.

<sup>25</sup> The requirements in Part 2.2.5 do not apply to the storage of rock, such as rip rap, landscape rock, pipe bedding gravel, and boulders. Refer to Part 2.3.3a for the requirements that apply to these types of materials.

<sup>26</sup> Examples of sediment barriers include berms, dikes, fiber rolls, silt fences, sandbags, gravel bags, or straw bale.

<sup>27</sup> Examples of cover include tarps, blown straw and hydroseeding.

<sup>28</sup> Where disturbance to steep slopes cannot be avoided, operators should consider implementing controls suitable for steep slope disturbances that are effective at minimizing erosion and sediment discharge (e.g., preservation of existing vegetation, hydraulic mulch, geotextiles and mats, compost blankets, earth dikes or drainage swales, terraces, velocity dissipation devices). To identify slopes and soil types that are of comparatively higher risk for sediment discharge in areas of the country where the CGP is in effect, operators can use the tables in Appendix F (see Tables F-2 thru F-6).

<sup>29</sup> Stockpiling topsoil at off-site locations, or transferring topsoil to other locations, is an example of a practice that is consistent with the requirements in Part 2.2.8. Preserving native topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. For example, some sites may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain, or may not have space to stockpile native topsoil on site for later use, in which case it may not be feasible to preserve topsoil.

<sup>30</sup> Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.

- a. Restrict vehicle and equipment use in these locations to avoid soil compaction; and
- b. Before seeding or planting areas of exposed soil that have been compacted, use techniques that rehabilitate and condition the soils as necessary to support vegetative growth.

#### **2.2.10 Protect storm drain inlets.**

- a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater from your site to a receiving water, provided you have authority to access the storm drain inlet.<sup>31</sup> Inlet protection measures are not required for storm drain inlets that are conveyed to a sediment basin, sediment trap, or similarly effective control; and
- b. Clean, or remove and replace, the inlet protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.

#### **2.2.11 Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.<sup>32</sup>**

#### **2.2.12 If you install a sediment basin or similar impoundment:**

- a. Situate the basin or impoundment outside of any receiving water, and any natural buffers established under Part 2.2.1;
- b. Design the basin or impoundment to avoid collecting water from wetlands;
- c. Design the basin or impoundment to provide storage for either:
  - i. The calculated volume of runoff from a 2-year, 24-hour storm;<sup>33</sup> or
  - ii. 3,600 cubic feet per acre drained.
- d. Utilize outlet structures that withdraw water from the surface of the sediment basin or similar impoundment, unless infeasible;<sup>34</sup>
- e. Use erosion controls and velocity dissipation devices to prevent erosion at inlets and outlets; and

<sup>31</sup> Inlet protection measures can be removed in the event of flood conditions or to prevent erosion.

<sup>32</sup> Examples of stormwater controls that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a constructed site drainage feature and at the outfall to slow down stormwater.

<sup>33</sup> Operators may refer to <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates> for guidance on determining the volume of precipitation associated with their site's local 2-year, 24-hour storm event.

<sup>34</sup> The circumstances in which it is infeasible to design outlet structures in this manner are rare. Exceptions may include areas with extended cold weather, where using surface outlets may not be feasible during certain time periods (although they must be used during other periods). If you determine that it is infeasible to meet this requirement, you must provide documentation in your SWPPP to support your determination, including the specific conditions or time periods when this exception will apply.

- f. Remove accumulated sediment to maintain at least one-half of the design capacity and conduct all other appropriate maintenance to ensure the basin or impoundment remains in effective operating condition.

**2.2.13 If using treatment chemicals** (e.g., *polymers, flocculants, coagulants*):

- a. **Use conventional erosion and sediment controls before and after the application of treatment chemicals.** Chemicals may only be applied where treated stormwater is directed to a sediment control (e.g., *sediment basin, perimeter control*) before discharge.
- b. **Select appropriate treatment chemicals.** Chemicals must be appropriately suited to the types of soils likely to be exposed during construction and present in the discharges being treated (i.e., *the expected turbidity, pH, and flow rate of stormwater flowing into the chemical treatment system or area*).
- c. **Minimize discharge risk from stored chemicals.** Store all treatment chemicals in leak-proof containers that are kept under storm-resistant cover and surrounded by secondary containment structures (e.g., *spill berms, dikes, spill containment pallets*), or provide equivalent measures designed and maintained to minimize the potential discharge of treatment chemicals in stormwater or by any other means (e.g., *storing chemicals in a covered area, having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill*).
- d. **Comply with State/local requirements.** Comply with applicable State and local requirements regarding the use of treatment chemicals.
- e. **Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier.** Use treatment chemicals and chemical treatment systems in accordance with good engineering practices, and with dosing specifications and sediment removal design specifications provided by the provider/supplier of the applicable chemicals, or document in your SWPPP specific departures from these specifications and how they reflect good engineering practice.
- f. **Ensure proper training.** Ensure all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training prior to beginning application of treatment chemicals. Among other things, the training must cover proper dosing requirements.
- g. **Perform additional measures specified by the EPA Regional Office for the authorized use of cationic chemicals.** If you have been authorized to use cationic chemicals at your site pursuant to Part 1.1.9, you must perform all additional measures as conditioned by your authorization to ensure the use of such chemicals will not result in discharges that do not meet water quality standards.

**2.2.14 Stabilize exposed portions of the site.** Implement and maintain stabilization measures (e.g., *seeding protected by erosion controls until vegetation is established*,<sup>35</sup> *sodding, mulching, erosion control blankets, hydromulch, gravel*) that minimize erosion from any areas of exposed soil on the site in accordance with Part.

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<sup>35</sup> If you will be evaluating the use of some type of erosion control netting to the site as part of your site stabilization, EPA encourages you to consider employing products that have been shown to minimize

**a. Stabilization Deadlines:<sup>36</sup>****Table 2 Deadlines for Initiating and Completing Site Stabilization.**

Total Amount of Land Disturbance Occurring At Any One Time <sup>37</sup>	Deadline
<b>i. Five acres or less (<math>\leq 5.0</math>)</b>  <b>Note: this includes sites disturbing more than five acres (<math>&gt;5.0</math>) total over the course of a project, but that limit disturbance at any one time (i.e., phase the disturbance) to five acres or less (<math>\leq 5.0</math>)</b>	<ul style="list-style-type: none"> <li>Initiate the installation of stabilization measures immediately<sup>38</sup> in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days;<sup>39</sup> and</li> <li>Complete the installation of stabilization measures as soon as practicable, but no later than 14 calendar days</li> </ul>

impacts on wildlife. For instance, the U.S. Fish & Wildlife Service provides recommendations on the type of netting practices that are considered "wildlife friendly," including those that use natural fiber or 100 percent biodegradable materials and that use a loose weave with a non-welded, movable jointed netting, as well as those products that are not wildlife friendly including square plastic netting that are degradable (e.g., photodegradable, UV-degradable, oxo-degradable), netting made from polypropylene, nylon, polyethylene, or polyester. Other recommendations include removing the netting product when it is no longer needed. See [https://www.fws.gov/midwest/eastlansing/library/pdf/WildlifeFriendlyErosionControlProducts\\_revised.pdf](https://www.fws.gov/midwest/eastlansing/library/pdf/WildlifeFriendlyErosionControlProducts_revised.pdf) for further information. There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products.

<sup>36</sup> EPA may determine, based on an inspection carried out under Part 4.8 and corrective actions required under Part 5.3, that the level of sediment discharge on the site makes it necessary to require a faster schedule for completing stabilization. For instance, if sediment discharges from an area of exposed soil that is required to be stabilized are compromising the performance of existing stormwater controls, EPA may require stabilization to correct this problem.

<sup>37</sup> Limiting disturbances to five (5) acres or less at any one time means that at no time during the project do the cumulative earth disturbances exceed five (5) acres. The following examples would qualify as limiting disturbances at any one time to five (5) acres or less:

1. The total area of disturbance for a project is five (5) acres or less.
2. The total area of disturbance for a project will exceed five (5) acres, but the operator ensures that no more than five (5) acres will be disturbed at any one time through implementation of stabilization measures. In this way, site stabilization can be used to "free up" land that can be disturbed without exceeding the five (5)-acre cap to qualify for the 14-day stabilization deadline. For instance, if an operator completes stabilization of two (2) acres of land on a five (5)-acre disturbance, then two (2) additional acres could be disturbed while still qualifying for the longer 14-day stabilization deadline.

<sup>38</sup> The following are examples of activities that would constitute the immediate initiation of stabilization:

1. Prepping the soil for vegetative or non-vegetative stabilization as long as seeding, planting, and/or installation of non-vegetative stabilization products takes place as soon as practicable, but no later than one (1) calendar day of completing soil preparation;
2. Applying mulch or other non-vegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the activities in # 1 – 3 on a portion of the entire area that will be stabilized; and
5. Finalizing arrangements to have stabilization product fully installed in compliance with the deadlines for completing stabilization.

<sup>39</sup> The requirement to initiate stabilization immediately is triggered as soon as you know that construction work on a portion of the site is temporarily ceased and will not resume for 14 or more days, or as soon as you know that construction work is permanently ceased. In the context of this provision, "immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased.

Total Amount of Land Disturbance Occurring At Any One Time <sup>37</sup>	Deadline
	after stabilization has been initiated. <sup>40</sup>
ii. More than five acres (>5.0)	<ul style="list-style-type: none"> <li>Initiate the installation of stabilization measures immediately<sup>41</sup> in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days;<sup>42</sup> and</li> <li>Complete the installation of stabilization measures as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.<sup>43</sup></li> </ul>

**b. Exceptions:**

- i. **Arid, semi-arid, and drought-stricken areas** (as defined in Appendix A). If it is the seasonally dry period (as defined in Appendix A)<sup>44</sup> or a period in which drought is occurring, and vegetative stabilization measures are being used:

- (a) Immediately initiate and, within 14 calendar days of temporary or permanent cessation of work in any portion of your site, complete the installation of temporary non-vegetative stabilization measures to the extent necessary to prevent erosion;
- (b) As soon as practicable, given conditions or circumstances on the site, complete all activities necessary to seed or plant the area to be stabilized; and
- (c) If construction is occurring during the seasonally dry period, indicate in your SWPPP the beginning and ending dates of the seasonally dry period and your site conditions. Also include the schedule you will follow for initiating and completing vegetative stabilization.

- ii. **Unforeseen circumstances.** Operators that are affected by unforeseen circumstances<sup>45</sup> that delay the initiation and/or completion of vegetative stabilization:

<sup>40</sup> If vegetative stabilization measures are being implemented, stabilization is considered "installed" when all activities necessary to seed or plant the area are completed, including the application of any non-vegetative protective cover (e.g., mulch, erosion control blanket), if applicable. If non-vegetative stabilization measures are being implemented, stabilization is considered "installed" when all such measures are implemented or applied.

<sup>41</sup> See footnote 38.

<sup>42</sup> See footnote 39.

<sup>43</sup> See footnote 40.

<sup>44</sup> The term "seasonally dry period" as defined in Appendix A refers to a month in which the long-term average total precipitation is less than or equal to 0.5 inches. Refer to EPA's Seasonally Dry Period Locator Tool at <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates> and supporting maps for assistance in determining whether a site is operating during a seasonally dry period for the area.

<sup>45</sup> Examples include problems with the supply of seed stock or with the availability of specialized equipment and unsuitability of soil conditions due to excessive precipitation and/or flooding.

- (a) Immediately initiate and, within 14 calendar days, complete the installation of temporary non-vegetative stabilization measures to prevent erosion;
- (b) Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on your site; and
- (c) Document in the SWPPP the circumstances that prevent you from meeting the deadlines in Part 2.2.14a and the schedule you will follow for initiating and completing stabilization.

**iii. Discharges to a sediment- or nutrient-impaired water or to a water that is identified by your State, Tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.** Complete stabilization as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.

**c. Final Stabilization Criteria** (for any areas not covered by permanent structures):

- i. Establish uniform, perennial vegetation (*i.e., evenly distributed, without large bare areas*) to provide 70 percent or more of the vegetative cover native to local undisturbed areas; and/or
- ii. Implement permanent non-vegetative stabilization measures<sup>46</sup> to provide effective cover of any areas of exposed soil.

**iii. Exceptions:**

- (a) **Arid, semi-arid, and drought-stricken areas** (as defined in Appendix A). Final stabilization is met if the area has been seeded or planted to establish vegetation that provides 70 percent or more of the vegetative cover native to local undisturbed areas within three (3) years and, to the extent necessary to prevent erosion on the seeded or planted area, non-vegetative erosion controls have been applied to provide cover for at least three years without active maintenance.
- (b) **Disturbed areas on agricultural land that are restored to their preconstruction agricultural use.** The Part 2.2.14c final stabilization criteria do not apply.
- (c) **Areas that need to remain disturbed.** In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed, and only the minimum area needed remains disturbed (*e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, materials*).

## 2.3 POLLUTION PREVENTION REQUIREMENTS<sup>47</sup>

You must implement pollution prevention controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.

<sup>46</sup> Examples of permanent non-vegetative stabilization measures include riprap, gravel, gabions, and geotextiles.

<sup>47</sup> Under this permit, you are not required to minimize exposure for any products or materials where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).

**2.3.1 For equipment and vehicle fueling and maintenance:**

- a. Provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuels and oils, from these activities;<sup>48</sup>
- b. If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR part 112 and Section 311 of the CWA;
- c. Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;
- d. Use drip pans and absorbents under or around leaky vehicles;
- e. Dispose of or recycle oil and oily wastes in accordance with other Federal, State, Tribal, or local requirements; and
- f. Clean up spills or contaminated surfaces immediately, using dry clean up measures (do not clean contaminated surfaces by hosing the area down), and eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.

**2.3.2 For equipment and vehicle washing:**

- a. Provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of wash waters;<sup>49</sup>
- b. Ensure there is no discharge of soaps, solvents, or detergents in equipment and vehicle wash water; and
- c. For storage of soaps, detergents, or solvents, provide either (1) cover (e.g., *plastic sheeting, temporary roofs*) to minimize the exposure of these detergents to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.

**2.3.3 For storage, handling, and disposal of building products, materials, and wastes:<sup>50</sup>**

- a. *For building materials and building products,<sup>51</sup> provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these products to*

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<sup>48</sup> Examples of effective means include:

- Locating activities away from receiving waters, storm drain inlets, and constructed or natural site drainage feature so that stormwater coming into contact with these activities cannot reach waters of the U.S.;
- Providing secondary containment (e.g., *spill berms, dikes, spill containment pallets*) and cover where appropriate; and
- Having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill.

<sup>49</sup> Examples of effective means include locating activities away from receiving waters and storm drain inlets or constructed or natural site drainage features and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls.

<sup>50</sup> Compliance with the requirements of this permit does not relieve compliance requirements with respect to Federal, State, or local laws and regulations governing the storage, handling, and disposal of solid, hazardous, or toxic wastes and materials.

<sup>51</sup> Examples of building materials and building products typically present at construction sites include asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures, and gravel and mulch stockpiles.

precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.

Exception: Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).

- b.** *For pesticides, herbicides, insecticides, fertilizers, and landscape materials:*
  - i.** In storage areas, provide either (1) cover (e.g., *plastic sheeting, temporary roofs*) to minimize the exposure of these chemicals to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas; and
  - ii.** Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label (see also Part 2.3.5).
- c.** *For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:*

The following requirements apply to the storage and handling of chemicals on your site. If you are already implementing controls as part of an SPCC or other spill prevention plan that meet or exceed the requirements of this Part, you may continue to do so and be considered in compliance with these provisions provided you reference the applicable parts of the SPCC or other plans in your SWPPP as required in Part 7.2.6b.viii.

  - i.** If any chemical container has a storage capacity of less than 55 gallons:
    - (a) The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
    - (b) If stored outside, use a spill containment pallet or similar device to capture small leaks or spills; and
    - (c) Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.
  - ii.** If any chemical container has a storage capacity of 55 gallons or more:
    - (a) The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
    - (b) Store containers a minimum of 50 feet from receiving waters, constructed or natural site drainage features, and storm drain inlets. If infeasible due to site constraints, store containers as far away from these features as the site permits. If site constraints prevent you from storing containers 50 feet away from receiving waters or the other features identified, you must document in your SWPPP the specific reasons why the 50-foot setback is infeasible, and how you will store containers as far away as the site permits;
    - (c) Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets, double-wall, above-ground storage tank); and
    - (d) Have a spill kit available on site that is in good working condition (i.e., not



damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill. Additional secondary containment measures are listed at 40 CFR § 112.7(c)(1).

- iii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. You are prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.
- d. *For hazardous or toxic wastes:*<sup>52</sup>
  - i. Separate hazardous or toxic waste from construction and domestic waste;
  - ii. Store waste in sealed containers, constructed of suitable materials to prevent leakage and corrosion, and labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable Federal, State, Tribal, or local requirements;
  - iii. Store all outside containers within appropriately-sized secondary containment (e.g., *spill berms, dikes, spill containment pallets*) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., *storing chemicals in a covered area, having a spill kit available on site*);
  - iv. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with Federal, State, Tribal, and local requirements;
  - v. Clean up spills immediately, using dry clean-up methods, and dispose of used materials properly. You are prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and
  - vi. Follow all other Federal, State, Tribal, and local requirements regarding hazardous or toxic waste.
- e. *For construction and domestic wastes:*<sup>53</sup>
  - i. Provide waste containers (e.g., *dumpster, trash receptacle*) of sufficient size and number to contain construction and domestic wastes;
    - (a) For waste containers with lids, keep waste container lids closed when not in use, and close lids at the end of the business day and during storm events. For waste containers without lids, provide either (1) cover (e.g., *a tarp, plastic sheeting, temporary roof*) to minimize exposure of wastes to precipitation, or (2) a similarly effective means designed to minimize the discharge of pollutants (e.g., *secondary containment*);
    - (b) On business days, clean up and dispose of waste in designated waste

<sup>52</sup> Examples of hazardous or toxic waste that may be present at construction sites include paints, caulks, sealants, fluorescent light ballasts, solvents, petroleum-based products, wood preservatives, additives, curing compounds, and acids.

<sup>53</sup> Examples of construction and domestic wastes include packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, demolition debris; and other trash or discarded materials.

containers; and

(c) Clean up immediately if containers overflow, and if there is litter elsewhere on the site from escaped trash.

ii. Waste containers are not required for the waste remnant or unused portions of construction materials or final products that are covered by the exception in Part 2.2.3a provided that:

(a) These wastes are stored separately from other construction or domestic wastes addressed by Part 2.3.3e.i (i.e., wastes not covered by the exception in Part 2.3.3a). If the wastes are mixed, they must be stored in waste containers as required in Part 2.3.3e.i; and

(b) These wastes are stored in designated areas of the site, the wastes are described in the SWPPP (see Part 7.2.6b.ix), and identified in the site plan (see Part 7.2.4i).

f. *For sanitary waste, position portable toilets so they are secure and will not be tipped or knocked over, and are located away from receiving waters, storm drain inlets, and constructed or natural site drainage features.*

#### **2.3.4 For washing applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials:**

a. Direct wash water into a leak-proof container or leak-proof and lined pit designed so no overflows can occur due to inadequate sizing or precipitation;

b. Handle washout or cleanout wastes as follows:

i. For liquid wastes:

(a) Do not dump liquid wastes or allow them to enter into constructed or natural site drainage features, storm inlets, or receiving waters;

(b) Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground;

(c) Comply with applicable State, Tribal, or local requirements for disposal

ii. Remove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3e; and

c. Locate any washout or cleanout activities as far away as possible from receiving waters, constructed or natural site drainage features, and storm drain inlets, and, to the extent feasible, designate areas to be used for these activities and conduct such activities only in these areas.

#### **2.3.5 For the application of fertilizers:**

a. Apply at a rate and in amounts consistent with manufacturer's specifications, or document in the SWPPP departures from the manufacturer specifications where appropriate in accordance with Part 7.2.6b.x;

b. Apply at the appropriate time of year for your location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;

- c. Avoid applying before heavy rains that could cause excess nutrients to be discharged;
- d. Never apply to frozen ground;
- e. Never apply to constructed or natural site drainage features; and
- f. Follow all other Federal, State, Tribal, and local requirements regarding fertilizer application.

### **2.3.6 Emergency Spill Notification Requirements**

Discharges of toxic or hazardous substances from a spill or other release are prohibited, consistent with Part 1.3.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302 occurs during a 24-hour period, you must notify the National Response Center (NRC) at (800) 424-8802 or, in the Washington, DC metropolitan area, call (202) 267-2675 in accordance with the requirements of 40 CFR part 110, 40 CFR part 117, and 40 CFR part 302 as soon as you have knowledge of the release. You must also, within seven (7) calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release. State, Tribal, or local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.

## **2.4 CONSTRUCTION DEWATERING REQUIREMENTS**

Comply with the following requirements to minimize the discharge of pollutants from dewatering<sup>54</sup> operations.

- 2.4.1** Route dewatering water through a sediment control (e.g., sediment trap or basin, pumped water filter bag) designed to prevent discharges with visual turbidity;<sup>55</sup>
- 2.4.2** Do not discharge visible floating solids or foam;
- 2.4.3** The discharge must not cause the formation of a visible sheen on the water surface, or visible oily deposits on the bottom or shoreline of the receiving water. Use an oil-water separator or suitable filtration device (such as a cartridge filter) designed to remove oil, grease, or other products if dewatering water is found to or expected to contain these materials;
- 2.4.4** To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge.<sup>56</sup> You are prohibited from using receiving waters as part of the treatment area;
- 2.4.5** To prevent dewatering-related erosion and related sediment discharges:
  - a. Use stable, erosion-resistant surfaces (e.g., well-vegetated grassy areas, clean filter stone, geotextile underlayment) to discharge from dewatering controls;

<sup>54</sup> "Dewatering" is defined in Appendix A as "the act of draining accumulated stormwater and/or ground water from building foundations, vaults, and trenches, or other similar points of accumulation."

<sup>55</sup> For the purposes of this permit, visual turbidity is present where there is a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast that can be identified by an observer.

<sup>56</sup> See footnote 19.

- b. Do not place dewatering controls, such as pumped water filter bags, on steep slopes (as defined in Appendix A); and
  - c. At all points where dewatering water is discharged, comply with the velocity dissipation requirements of Part 2.2.11.
- 2.4.6** For backwash water, either haul it away for disposal or return it to the beginning of the treatment process;
- 2.4.7** Replace and clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications; and
- 2.4.8** Comply with dewatering-specific inspection requirements in Part 4.

### **3 WATER QUALITY-BASED EFFLUENT LIMITATIONS**

#### **3.1 GENERAL EFFLUENT LIMITATION TO MEET APPLICABLE WATER QUALITY STANDARDS**

Discharges must be controlled as necessary to meet applicable water quality standards. Discharges must also comply with any additional State or Tribal requirements that are in Part 9.

In the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time you become aware, or EPA determines, that discharges are not being controlled as necessary to meet applicable water quality standards, you must take corrective action as required in Parts 5.1 and 5.2, and document the corrective actions as required in Part 5.4.

EPA may insist that you install additional controls (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in an EPA-established or approved TMDL.

If during your coverage under a previous permit, you were required to install and maintain stormwater controls specifically to meet the assumptions and requirements of an EPA-approved or established TMDL (for any parameter) or to otherwise control your discharge to meet water quality standards, you must continue to implement such controls as part of your coverage under this permit.

#### **3.2 WATER QUALITY-BASED CONDITIONS FOR SITES DISCHARGING TO CERTAIN IMPAIRED AND HIGH QUALITY RECEIVING WATERS**

For any portion of the site that discharges to a sediment or nutrient-impaired water or to a water that is identified by your State, Tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes,<sup>57</sup> you must comply with the inspection frequency specified in Part 4.3 and you must comply with the stabilization deadline specified in Part 2.2.14b.iii.<sup>58</sup>

<sup>57</sup> Refer to Appendix A for definitions of "impaired water" and "Tier 2," "Tier 2.5," and "Tier 3" waters. For assistance in determining whether your site discharges to impaired waters, EPA has developed a tool that is available at <https://www.epa.gov/npdes/epas-stormwater-discharge-mapping-tools>. For assistance in determining whether your site discharges to a Tier 2, 2.5, or 3 water, refer to the list of such waters at <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates>.

<sup>58</sup> If you qualify for any of the reduced inspection frequencies in Part 4.4, you may conduct inspections in

If you discharge to a water that is impaired for a parameter other than a sediment-related parameter or nutrients, EPA will inform you if any additional controls are necessary for your discharge to be controlled as necessary to meet water quality standards. These controls might include those necessary for your discharge to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL. In addition, EPA may require you to apply for and obtain coverage under an individual NPDES permit.

In addition, on a case-by-case basis, EPA may notify operators of new sites or operators of existing sites with increased discharges that additional analyses, stormwater controls, and/or other measures are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary.

If you discharge to a water that is impaired for polychlorinated biphenyls (PCBs) and are engaging in demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, you must:

- a. Implement controls<sup>59</sup> to minimize the exposure of PCB-containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures, to precipitation and to stormwater; and
- b. Ensure that disposal of such materials is performed in compliance with applicable State, Federal, and local laws.

### **3.3 TURBIDITY BENCHMARK MONITORING FOR SITES DISCHARGING DEWATERING WATER TO PROTECT THE WATER QUALITY OF SENSITIVE WATERS**

For sites discharging dewatering water to “sensitive waters” (i.e., receiving waters listed as impaired for sediment or a sediment-related parameter (as defined in Appendix A), or receiving waters designated as a Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes) you are required to comply with the benchmark monitoring requirements in this Part and document the procedures you will use at your site in your SWPPP pursuant to Part 7.2.8. A summary of these requirements is included in Table 1.

EPA notes that the benchmark threshold is not an effluent limitation, rather it is an indicator that the dewatering controls may not be working to protect water quality, which the operator must investigate and correct as appropriate. A benchmark exceedance is not a permit violation. However, if a benchmark exceedance triggers corrective action in Part 5.1.5a, failure to conduct any required action is a permit violation.

Where there are multiple operators associated with the same site, the operators may coordinate with one another to carry out the monitoring requirements of this Part in order to avoid duplicating efforts. Such coordinating arrangements must be described in the SWPPP consistent with Part 7.2.8. Regardless of how the operators divide the

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accordance with Part 4.4 for any portion of your site that discharges to a sensitive water.

<sup>59</sup> Examples of controls to minimize exposure of PCBs to precipitation and stormwater include separating work areas from non-work areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, and using tools that minimize dust and heat (<212°F). For additional information, refer to Part 2.3.3 of the CGP Fact Sheet.

responsibilities for monitoring and reporting, each operator remains responsible for compliance with these requirements.<sup>60</sup>

### 3.3.1 Turbidity monitoring requirements<sup>61</sup>

- a. **Sampling frequency.** You must collect at least one turbidity sample from your dewatering discharge each day a discharge occurs.
- b. **Sampling location.** Samples must be taken at all points where dewatering water is discharged. Samples must be taken after the dewatering water has been treated by installed treatment devices pursuant to Parts 2.4.1 and 2.4.3 and prior to its discharge off site into a receiving water, constructed or natural site drainage feature, or storm drain inlet.
- c. **Representative samples.** Samples taken must be representative of the dewatering discharge for any given day as required in Appendix G (standard permit conditions), Part G.10.2.
- d. **Test methods.** Samples must be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) and conforms with a Part 136-approved method (e.g., methods 180.1 and 2130). You are required to use the meter, and conduct a calibration verification prior to each day's use, consistent with the manufacturer's instructions.

### 3.3.2 Turbidity benchmark

- a. The benchmark threshold for turbidity for this permit is 50 NTUs (referred to elsewhere in this permit as the "standard 50 NTU benchmark") unless EPA has authorized the use of an alternate benchmark in accordance with Part 3.3.2b.
- b. **Request for alternate benchmark threshold.**
  - i. At any time prior to or during your coverage under this permit, you may request that EPA approve a benchmark for your site that is higher than 50 NTUs if you have information demonstrating the higher number is the same as your receiving water's water quality standard for turbidity. Unless EPA approves an alternate benchmark, you will be required to use the standard 50 NTU benchmark. To request approval of an alternate benchmark, you must submit the following information to your applicable EPA Regional Office (see Appendix K):
    - (a) The current turbidity water quality standard that applies to your receiving

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<sup>60</sup> For instance, if Operator A relies on Operator B to meet the Part 3.3.1 turbidity monitoring requirements, the Part 3.3.4 reporting and recordkeeping requirements, and the Part 5.2.2 corrective action provisions when applicable, Operator A does not have to duplicate these same functions if Operator B is implementing them for both operators to be in compliance with the permit. However, Operator A remains responsible for complying with these permit requirements if Operator B fails to take actions that were necessary for Operator A to comply with the permit. See also footnote 83. EPA notes that both Operator A and B are required to submit turbidity monitoring reports as required under Part 3.3.4, however, Operator A's report does not need to include the data collected by Operator B as long as Operator B submits the required data and Operator A's report indicates that it is relying on Operator B to report the data. See Part 3.3.4a.

<sup>61</sup> Operators may find it useful to consult EPA's *Monitoring and Inspection Guide for Construction Dewatering*, available at <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates>, which provides guidelines on how to correctly monitor for turbidity, determine if the weekly average exceeds the benchmark, and, if so, how to proceed with corrective action.

water and the source/citation.<sup>62</sup>

(b) If the applicable turbidity water quality standard requires information on natural or background turbidity levels (e.g., "no more than 10 NTU above natural turbidity levels") to determine the specific standard for the receiving water, include available data that can be used to establish the natural turbidity levels of your receiving water (including literature studies or Federal, State, Tribal, or local government data). Data must be representative of the natural turbidity levels of your specific receiving water. Identify the source(s) of all data provided, including if the data are from samples you collected of the receiving water.

- ii. EPA will inform you of its decision on whether to approve the requested alternate benchmark within 30 days. EPA may approve your request, request additional time (e.g., if additional information is needed to substantiate the data you provided), or deny your request. Unless and until EPA approves your request to use an alternate benchmark, you are required to use the standard benchmark of 50 NTUs and take any required corrective actions if an exceedance occurs.

**3.3.3 Comparison of turbidity samples to benchmark.** Compare the weekly average<sup>63</sup> of your turbidity monitoring results to the standard 50 NTU benchmark, or alternate benchmark if approved by EPA.

- a. If the weekly average of your turbidity monitoring results exceeds the standard benchmark (or your approved alternate benchmark), you are required to conduct follow-up corrective action in accordance with Part 5.2.2 and document any corrective action taken in your corrective action log in accordance with Part 5.4.
- b. For averaging purposes, a "monitoring week" starts with a Monday and ends on Sunday. Once a new monitoring week starts, you will need to calculate a new average for that week of turbidity monitoring results.<sup>64</sup> A weekly average may consist of one or more turbidity monitoring results.
- c. Although you are not required to collect and analyze more than one turbidity sample per day from your dewatering discharge, if you do collect and analyze more than one sample on any given day, you must include any additional results in the

<sup>62</sup> For instance, if your site is located in Washington, DC, and you are discharging to a Class B water, for which the water quality standard is that turbidity may not increase above ambient levels by more than 20 percent, you would reference "Water Quality Standards for the District of Columbia, Chapter 11, Section 1104.8."

<sup>63</sup> A "weekly average" is defined as the sum of all of the turbidity samples taken during a "monitoring week" divided by the number of samples measured during that week. Average values should be calculated to the nearest whole number.

<sup>64</sup> For example, if turbidity samples from your dewatering discharge in week 1 result in values of 30 NTU on Tuesday, 40 NTU on Wednesday, and 45 NTU on Thursday, your weekly average turbidity value would be 38.33 NTU  $((30+40+45) \div 3 = 38 \text{ NTU})$ . If in week 2, your turbidity samples resulted in values of 45 NTU on Monday, 30 NTU on Tuesday, 25 NTU on Wednesday, and 15 NTU on Thursday, you would calculate a new average for that week, which would yield an average turbidity value of 28.75 NTU  $((45+30+25+15) \div 4 = 29 \text{ NTU})$ . By comparison, if your samples on consecutive days from Friday to Monday were 60 NTU, 45 NTU, 40 NTU, and 43 NTU, respectively, and there are no other dewatering discharges for the remainder of the week, you would calculate one weekly average for the Friday to Sunday to be 48 NTU  $((60+45+40) \div 3 = 48 \text{ NTU})$ , and a separate weekly average for the one Monday to be 43 NTU  $(43 \div 1 = 43 \text{ NTU})$ .

calculation of your weekly average (i.e., add all individual results for that monitoring week and divide by the total number of samples).<sup>65</sup>

- d. If you are conducting turbidity monitoring for more than one dewatering discharge point, you must calculate a weekly average turbidity value for each discharge point and compare each to the turbidity benchmark.

### 3.3.4 Reporting and recordkeeping.

- a. You must submit reports of your weekly average turbidity data to EPA no later than 30 days following the end of each monitoring quarter. If there are monitoring weeks in which there was no dewatering discharge, or if there is a monitoring quarter with no dewatering discharge, indicate this in your turbidity monitoring report. If another operator associated with your same site is conducting turbidity monitoring on your behalf pursuant to Part 3.3, indicate this in your turbidity monitoring report.
- b. For the purposes of this permit, the following monitoring quarters and reporting deadlines apply:

**Table 3. Monitoring Quarters and Deadlines for Reporting Turbidity Benchmark Monitoring Data.**

Monitoring Quarter #	Months	Reporting Deadline (no later than 30 days after end of the monitoring quarter)
1	January 1 – March 31	April 30
2	April 1 – June 30	July 30
3	July 1 – September 30	October 30
4	October 1 – December 31	January 30

- c. You must use EPA's NPDES eReporting Tool (NeT) to electronically submit your quarterly turbidity data, unless, consistent with Part 1.4.2, you received a waiver from your applicable EPA Regional Office. If the EPA Regional Office grants you approval to use a paper turbidity monitoring report form, and you elect to use it, you must complete the form in Appendix K. If EPA approves of your request to use an alternate turbidity benchmark pursuant to Part 3.3.2b, EPA will substitute the alternate benchmark in your NeT account.
- d. For each day in which you are required to monitor, you must record the monitoring information required by Appendix G, Parts G.10.2 and G.10.3 and retain all such information for a period of at least three years from the date this permit expires or from the date your authorization is terminated.

<sup>65</sup> For example, if during a monitoring week you take two turbidity samples on Tuesday with a value of 30 NTU and 35 NTU, three samples on Wednesday with a value of 40 NTU, 45 NTU, and 48 NTU, and one sample on Thursday with a value of 45 NTU, your weekly average turbidity value for this week would be 41 NTU  $((30+35+40+45+48+45) \div 6 = 41 \text{ NTU})$ .



**Table 4. Summary of Turbidity Benchmark Monitoring Requirements.**

Applicability	Sampling Requirement	Turbidity Benchmark	Corrective Action	Reporting
Sites discharging dewatering water to a sediment-impaired water or to a water designated as a Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.	Collect at least one turbidity sample per day, from each discharge point, on any day there is a dewatering discharge.  Use turbidity sampling procedures specified in Part 3.3.1.	Compare the weekly average of your turbidity monitoring results to the 50 NTU benchmark (or alternate benchmark if approved by EPA).	If the weekly average of turbidity monitoring results exceeds the 50 NTU turbidity benchmark (or alternate benchmark if approved by EPA), you are required to take follow-up corrective action in accordance with Part 5.2.2.	Report all weekly average turbidity monitoring results on a quarterly basis via NeT-CGP (unless use of the paper monitoring form in Appendix K is approved by EPA) no later than 30 days following the end of each monitoring quarter.

#### 4 INSPECTION REQUIREMENTS

##### 4.1 PERSON(S) RESPONSIBLE FOR CONDUCTING SITE AND DEWATERING INSPECTIONS

The person(s) inspecting your site may be a person on your staff or a third party you hire to conduct such inspections. You are responsible for ensuring that any person conducting inspections pursuant to this Part is a "qualified person." A qualified person is someone who has completed the training required by Part 6.3.

##### 4.2 FREQUENCY OF INSPECTIONS.<sup>66</sup>

At a minimum, you must conduct a site inspection in accordance with one of the two schedules listed below, unless you are subject to the Part 4.3 site inspection frequency for discharges to sediment or nutrient-impaired or high quality waters, or qualify for a Part 4.4 reduction in the inspection frequency:

**4.2.1** At least once every seven (7) calendar days; or

**4.2.2** Once every 14 calendar days *and* within 24 hours<sup>67</sup> of the occurrence of:

- a.** A storm event that produces 0.25 inches or more of rain within a 24-hour period.
  - i.** If a storm event produces 0.25 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.25 inches but together produce 0.25 inches or more in 24 hours), you are required to conduct one inspection within 24 hours of when 0.25 inches of rain or more has fallen.

<sup>66</sup> Inspections are only required during the site's normal working hours.

<sup>67</sup> For the purposes of the inspection requirements in this Part, conducting an inspection "within 24 hours" means that once either of the two conditions in Parts 4.2.2a or 4.2.2b are met you have 24 hours from that time to conduct an inspection. For clarification, the 24 hours is counted as a continuous passage of time, and not counted by business hours (e.g., 3 business days of 8 hours each). When the 24-hour inspection time frame occurs entirely outside of normal working hours, you must conduct an inspection by no later than the end of the next business day.

- ii. If a storm event produces 0.25 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.25 inches or more of rain on subsequent days, you must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain (i.e., only two inspections would be required for such a storm event).<sup>68</sup>
  - b. A discharge caused by snowmelt from a storm event that produces 3.25 inches<sup>69</sup> or more of snow within a 24-hour period. You are required to conduct one inspection once the discharge of snowmelt from a 3.25-inch or more snow accumulation occurs. Additional snowmelt inspections are only required if following the discharge from the first snowmelt, there is a discharge from a separate storm event that produces 3.25 inches or more of snow.
- 4.2.3** To determine whether a storm event meets either of the thresholds in Parts 4.2.2a or 4.2.2b:
- a. For rain, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any 24-hour period during which there is 0.25 inches or more of rainfall, you must record the total rainfall measured for that day in accordance with Part 4.7.1d.
  - b. For snow, you must either take measurements of snowfall at your site,<sup>70</sup> or rely on similar information from a local weather forecasting provider that is representative of your location.

### **4.3 INCREASE IN INSPECTION FREQUENCY FOR CERTAIN SITES.**

The increased inspection frequencies established in this Part take the place of the Part 4.2 inspection frequencies for the portion of the site affected.

- 4.3.1 For any portion of the site that discharges to a sediment or nutrient-impaired water or to a water that is identified by your State, Tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes (see Part 3.2),** you must conduct an once every seven (7) calendar days *and* within 24 hours of the occurrence of a storm event that produces 0.25 inches or more of rain within a 24-hour period, or within 24 hours of a snowmelt discharge from a storm event that produces 3.25 inches or more of snow within a 24-hour period.

<sup>68</sup> For example, if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, you would be required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection would not be required within 24 hours of the Day 3 rainfall.

<sup>69</sup> This is the amount of snow that is equivalent to 0.25 inches of rain, based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain. See <https://www.nssl.noaa.gov/education/svrwx101/winter/faq/>.

<sup>70</sup> For snowfall measurements, EPA suggests use of NOAA's National Weather Service guidelines at [https://www.weather.gov/jkl/snow\\_measurement](https://www.weather.gov/jkl/snow_measurement). These guidelines recommend use of a "snowboard" (a piece of wood about 16 inches by 16 inches) that is placed in an unobstructed part of the site on a hard surface.

Refer to Parts 4.2.3a and 4.2.3b for the requirements to determine if a storm event produces enough rain or snow to trigger the inspection requirement.

- 4.3.2 For sites discharging dewatering water**, you must conduct an inspection in accordance with Part 4.6.3 during the discharge once per day on which the discharge occurs. The Part 4.2 inspection frequency still applies to all other portions of the site, unless the site is affected by either the increased frequency in Part 4.3.1 or the reduced frequency in Part 4.4.

#### **4.4 REDUCTIONS IN INSPECTION FREQUENCY**

##### **4.4.1 Stabilized areas.**

- a.** You may reduce the frequency of inspections to twice per month for the first month, no more than 14 calendar days apart, then once per month until permit coverage is terminated consistent with Part 8 in any area of your site where the stabilization steps in Part 2.2.14a have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in Parts 4.2 and 4.3, as applicable. You must document the beginning and ending dates of this period in your SWPPP.
- b. Exception.** For “linear construction sites” (as defined in Appendix A) where disturbed portions have undergone final stabilization at the same time active construction continues on others, you may reduce the frequency of inspections to twice per month for the first month, no more than 14 calendar days apart, in any area of your site where the stabilization steps in Part 2.2.14a have been completed. After the first month, inspect once more within 24 hours of the occurrence of a storm event that produces 0.25 inches of rain or more within a 24-hour period, or within 24 hours of a snowmelt discharge from a storm event that produces 3.25 inches or more of snow within a 24-hour period. If there are no issues or evidence of stabilization problems, you may suspend further inspections. If “wash-out” of stabilization materials and/or sediment is observed, following re-stabilization, inspections must resume at the inspection frequency required in Part 4.4.1a. Inspections must continue until final stabilization is visually confirmed following a storm event that produces 0.25 inches of rain or more within a 24-hour period.

- 4.4.2 Arid, semi-arid, or drought-stricken areas** (as defined in Appendix A). If it is the seasonally dry period<sup>71</sup> or a period in which drought is occurring, you may reduce the frequency of inspections to once per month and within 24 hours of the occurrence of a storm event that produces 0.25 inches of rain or more within a 24-hour period, or within 24 hours of a snowmelt discharge from a storm event that produces 3.25 inches or more of snow within a 24-hour period. You must document that you are using this reduced schedule and the beginning and ending dates of the seasonally dry period in your SWPPP. Follow the procedures in Part 4.2.3a and 4.2.3b, accordingly, to determine if a storm event occurs that produces 0.25 inches or more of rain or 3.25 inches or more of snow within a 24-hour period. For any 24-hour period during which there is 0.25 inches or more of rainfall, or 3.25 inches or more of snow, you must record the total rainfall or snow measured for that day in accordance with Part 4.7.1d.

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<sup>71</sup> See footnote 44.

**4.4.3 Frozen conditions:**

- a.** If you are suspending construction activities due to frozen conditions, you may temporarily suspend inspections on your site until thawing conditions (as defined in Appendix A) begin to occur if:
  - i.** Discharges are unlikely due to continuous frozen conditions that are likely to continue at your site for at least three (3) months based on historic seasonal averages.<sup>72</sup> If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, you must immediately resume your regular inspection frequency as described in Parts 4.2 and 4.3, as applicable;
  - ii.** Land disturbances have been suspended; and
  - iii.** All disturbed areas of the site have been stabilized in accordance with Part 2.2.14a.
- b.** If you are still conducting construction activities during frozen conditions, you may reduce your inspection frequency to once per month if:
  - i.** Discharges are unlikely due to continuous frozen conditions that are likely to continue at your site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, you must immediately resume your regular inspection frequency as described in Parts 4.2 and 4.3, as applicable; and
  - ii.** Except for areas in which you are actively conducting construction activities, disturbed areas of the site have been stabilized in accordance with Part 2.2.14a.

You must document the beginning and ending dates of this period in your SWPPP.

**4.5 AREAS THAT MUST BE INSPECTED**

During your site inspection, you must at a minimum inspect the following areas of your site:

- 4.5.1** All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with Part 2.2.14a;
- 4.5.2** All stormwater controls, including pollution prevention controls, installed at the site to comply with this permit;<sup>73</sup>
- 4.5.3** Material, waste, borrow, and equipment storage and maintenance areas that are covered by this permit;
- 4.5.4** All areas where stormwater typically flows within the site, including constructed or natural site drainage features designed to divert, convey, and/or treat stormwater;
- 4.5.5** All areas where construction dewatering is taking place, including controls to treat the dewatering discharge and any channelized flow of water to and from those controls;

<sup>72</sup> Use data sets that include the most recent data available to account for recent precipitation patterns and trends.

<sup>73</sup> This includes the requirement to inspect for sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with Part 2.2.4.

**4.5.6** All points of discharge from the site; and

**4.5.7** All locations where stabilization measures have been implemented.

You are not required to inspect areas that, at the time of the inspection, are considered unsafe to your inspection personnel.

#### **4.6 REQUIREMENTS FOR INSPECTIONS**

**4.6.1** During each site inspection, you must at a minimum:

- a.** Check whether all stormwater controls (*i.e., erosion and sediment controls and pollution prevention controls*) are properly installed, appear to be operational, and are working as intended to minimize pollutant discharges.
- b.** Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site.
- c.** Identify any locations where new or modified stormwater controls are necessary to meet the requirements of Parts 2 and/or 3.
- d.** Check for signs of visible erosion and sedimentation (*i.e., sediment deposits*) that have occurred and are attributable to your discharge at points of discharge and, if applicable, on the banks of any receiving waters flowing within or immediately adjacent to the site;
- e.** Check for signs of sediment deposition that are visible from your site and attributable to your discharge (e.g., sand bars with no vegetation growing on top in receiving waters or in other constructed or natural site drainage features, or the buildup of sediment deposits on nearby streets, curbs, or open conveyance channels).
- f.** Identify any incidents of noncompliance observed.

**4.6.2** If a discharge is occurring during your inspection:

- a.** Identify all discharge points at the site; and
- b.** Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants. Check also for signs of these same pollutant characteristics that are visible from your site and attributable to your discharge in receiving waters or in other constructed or natural site drainage features.

**4.6.3** For dewatering inspections conducted pursuant to Parts 4.3.2, record the following in a report within 24 hours of completing the inspection:

- a.** The inspection date;
- b.** Names and titles of personnel making the inspection;
- c.** Approximate times that the dewatering discharge began and ended on the day of inspection;<sup>74</sup>
- d.** Estimates of the rate (in gallons per day) of discharge on the day of inspection;

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<sup>74</sup> If the dewatering discharge is a continuous discharge that continues after normal business hours, indicate that the discharge is continuous.

- e. Whether or not any of the following indications of pollutant discharge were observed at the point of discharge to any receiving waters flowing through or immediately adjacent to the site and/or to constructed or natural site drainage features or storm drain inlets:<sup>75</sup>
  - i. a sediment plume, suspended solids, unusual color, presence of odor, decreased clarity, or presence of foam; and/or
  - ii. a visible sheen on the water surface or visible oily deposits on the bottom or shoreline of the receiving water; and
- f. Photographs of (1) the dewatering water prior to treatment by a dewatering control(s) and the final discharge after treatment; (2) the dewatering control(s); and (3) the point of discharge to any receiving waters flowing through or immediately adjacent to the site and/or to constructed or natural site drainage features, storm drain inlets, and other conveyances to receiving waters.

You must also comply with the Part 4.7.2, 4.7.3, and 4.7.4 requirements for signing the reports, keeping them available on site, and retaining copies.

**4.6.4** Based on the results of your inspection:

- a. Complete any necessary maintenance repairs or replacements under Part 2.1.4 or under Part 5, whichever applies; and
- b. Modify your SWPPP site map in accordance with Part 7.4.1 to reflect changes to your stormwater controls that are no longer accurately reflected on the current site map.

**4.7 INSPECTION REPORT**

**4.7.1** You must complete an inspection report within 24 hours of completing any site inspection. Each inspection report (except for dewatering inspection reports, which are covered in Part 4.6.3) must include the following:

- a. The inspection date;
- b. Names and titles of personnel making the inspection;
- c. A summary of your inspection findings, covering at a minimum the observations you made in accordance with Part 4.6, including any problems found during your inspection that make it necessary to perform routine maintenance pursuant to Part 2.1.4b or corrective action pursuant to Part 5. Include also any documentation as to why the corrective action procedures under Part 5 are unnecessary to fix a problem that repeatedly occurs as described in Part 2.1.4c;
- d. If you are inspecting your site at the frequency specified in Part 4.2.2, Part 4.3, or Part 4.4.1b, and you conducted an inspection because of a storm event that produced rainfall measuring 0.25 inches or more within a 24-hour period, you must include the applicable rain gauge or weather station readings that triggered the inspection. Similarly, if you conducted an inspection because of a snowmelt discharge from a storm event that produced 3.25 inches or more of snow within a 24-hour period, you must include any measurements taken of snowfall at your site, or weather station information you relied on; and

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<sup>75</sup> If the operator observes any of these indicators of pollutant discharge, corrective action is required consistent with Parts 5.1.5b and 5.2.2.

- e. If you determined that it is unsafe to inspect a portion of your site, you must describe the reason you found it to be unsafe and specify the locations to which this condition applies.

**4.7.2** Each inspection report must be signed by the operator's signatory in accordance with Appendix G, Part G.11 of this permit.

**4.7.3** You must keep a copy of all inspection reports at the site or at an easily accessible location, so that it can be made immediately available at the time of an on-site inspection or upon request by EPA.<sup>76</sup>

**4.7.4** You must retain all inspection reports completed for this Part for at least three (3) years from the date that your permit coverage expires or is terminated.

#### **4.8 INSPECTIONS BY EPA**

You must allow EPA, or an authorized representative of EPA, to conduct the following activities at reasonable times. To the extent that you are utilizing shared controls, that are not on site, to comply with this permit, you must make arrangements for EPA to have access at all reasonable times to those areas where the shared controls are located.

**4.8.1** Enter onto all areas of the site, including any construction support activity areas covered by this permit, any off-site areas where shared controls are utilized to comply with this permit, discharge locations, adjoining waterbodies, and locations where records are kept under the conditions of this permit;

**4.8.2** Access and copy any records that must be kept under the conditions of this permit;

**4.8.3** Inspect your construction site, including any construction support activity areas covered by this permit (see Part 1.2.1c), any stormwater controls installed and maintained at the site, and any off-site shared controls utilized to comply with this permit; and

**4.8.4** Sample or monitor for the purpose of ensuring compliance.

### **5 CORRECTIVE ACTIONS**

#### **5.1 CONDITIONS TRIGGERING CORRECTIVE ACTION.**

You must take corrective action to address any of the following conditions identified at your site:

**5.1.1** A stormwater control needs a significant repair or a new or replacement control is needed, or, in accordance with Part 2.1.4c, you find it necessary to repeatedly (i.e., three (3) or more times) conduct the same routine maintenance fix to the same control at the same location (unless you document in your inspection report under Part 4.7.1c that the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix under Part 2.1.4); or

**5.1.2** A stormwater control necessary to comply with the requirements of this permit was never installed, or was installed incorrectly; or

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<sup>76</sup> Inspection reports may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of inspection report records, refer to the Fact Sheet discussion related to Part 4.7.3.

**5.1.3** Your discharges are not meeting applicable water quality standards;

**5.1.4** A prohibited discharge has occurred (see Part 1.3); or

**5.1.5** During discharge from site dewatering activities:

- a.** The weekly average of your turbidity monitoring results exceeds the 50 NTU benchmark (or alternate benchmark if approved by EPA pursuant to Part 3.3.2b); or
- b.** You observe or you are informed by EPA, State, or local authorities of the presence of the conditions specified in Part 4.6.3e.

## **5.2 CORRECTIVE ACTION DEADLINES**

**5.2.1** If responding to any of the Part 5.1.1, 5.1.2, 5.1.3, or 5.1.4 triggering conditions, you must:

- a.** Immediately take all reasonable steps to address the condition, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events; and
- b.** When the problem does not require a new or replacement control or significant repair, the corrective action must be completed by the close of the next business day; or
- c.** When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, by no later than seven (7) calendar days from the time of discovery. If it is infeasible to complete the installation or repair within seven (7) calendar days, you must document in your records why it is infeasible to complete the installation or repair within the 7-day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as feasible after the 7-day timeframe. Where these actions result in changes to any of the stormwater controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within seven (7) calendar days of completing this work.

**5.2.2** If responding to either of the Part 5.1.5 triggering conditions related to site dewatering activities, you must:

- a.** Immediately take all reasonable steps to minimize or prevent the discharge of pollutants until you can implement a solution, including shutting off the dewatering discharge as soon as possible depending on the severity of the condition<sup>77</sup> taking safety considerations into account;
- b.** Determine whether the dewatering controls are operating effectively and whether they are causing the conditions; and
- c.** Make any necessary adjustments, repairs, or replacements to the dewatering controls to lower the turbidity levels below the benchmark or remove the visible plume or sheen.

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<sup>77</sup> For instance, if the weekly average of your turbidity monitoring results or a single sample is extremely high (e.g., a single turbidity sample results in 355 NTUs or higher), you should take action to safely shut off the discharge so that you can evaluate the cause of the high turbidity. Note: A single turbidity sample of 355 NTUs or higher means that the weekly average turbidity value will exceed 50 NTU regardless of the turbidity values the other days during the week.



When you have completed these steps and made any changes deemed necessary, you may resume discharging from your dewatering activities.

### **5.3 CORRECTIVE ACTION REQUIRED BY EPA**

You must comply with any corrective actions required by EPA as a result of permit violations found during an inspection carried out under Part 4.8.

### **5.4 CORRECTIVE ACTION LOG**

#### **5.4.1** For each corrective action taken in accordance with this Part, you must record the following in a corrective action log:

- a.** Within 24 hours of identifying the corrective action condition, document the specific condition and the date and time it was identified.
- b.** Within 24 hours of completing the corrective action (in accordance with the deadlines in Part 5.2), document the actions taken to address the condition, including whether any SWPPP modifications are required.

#### **5.4.2** Each entry into the corrective action log, consisting of the information required by both Parts 5.4.1a and 5.4.1b, must be signed by the operator's signatory in accordance with Appendix G, Part G.11.2 of this permit.

#### **5.4.3** You must keep a copy of the corrective action log at the site or at an easily accessible location, so that it can be made immediately available at the time of an on-site inspection or upon request by EPA.<sup>78</sup>

#### **5.4.4** You must retain the corrective action log for at least three (3) years from the date that your permit coverage expires or is terminated.

## **6 STORMWATER TEAM FORMATION/STAFF TRAINING REQUIREMENTS**

### **6.1 STORMWATER TEAM**

Each operator, or group of multiple operators, must assemble a "stormwater team" that will be responsible for carrying out activities necessary to comply with this permit. The stormwater team must include the following people:

- a.** Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls);
- b.** Personnel responsible for the application and storage of treatment chemicals (if applicable);
- c.** Personnel who are responsible for conducting inspections as required in Part 4.1; and
- d.** Personnel who are responsible for taking corrective actions as required in Part 5.

Members of the stormwater team must be identified in the SWPPP pursuant to Part 7.2.2.

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<sup>78</sup> The corrective action log may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of corrective action log records, refer to the Fact Sheet discussion related to Part 4.7.3.

## 6.2 GENERAL TRAINING REQUIREMENTS FOR STORMWATER TEAM MEMBERS

Prior to the commencement of construction activities, you must ensure that all persons<sup>79</sup> assigned to the stormwater team understand the requirements of this permit and their specific responsibilities with respect to those requirements, including the following related to the scope of their job duties:

- a. The permit requirements and deadlines associated with installation, maintenance, and removal of stormwater controls, as well as site stabilization;
- b. The location of all stormwater controls on the site required by this permit and how they are to be maintained;
- c. The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- d. When and how to conduct inspections, record applicable findings, and take corrective actions. Specific training requirements for persons conducting site inspections are included in Part 6.3.

You are responsible for ensuring that all activities on the site comply with the requirements of this permit. You are not required to provide or document formal training for subcontractors or other outside service providers (unless the subcontractors or outside service providers are responsible for conducting the inspections required in Part 4, in which case you must provide such documentation consistent with Part 7.2.2), but you must ensure that such personnel understand any requirements of this permit that may be affected by the work they are subcontracted to perform.

## 6.3 TRAINING REQUIREMENTS FOR PERSONS CONDUCTING INSPECTIONS

For projects that receive coverage under this permit on or after February 17, 2023, to be considered a qualified person under Part 4.1 for conducting inspections under Part 4, you must, at a minimum, either:

- a. Have completed the EPA construction inspection course developed for this permit and have passed the exam; or
- b. Hold a current valid construction inspection certification or license from a program that, at a minimum, covers the following:<sup>80</sup>
  - i. Principles and practices of erosion and sediment control and pollution prevention practices at construction sites;
  - ii. Proper installation and maintenance of erosion and sediment controls and pollution prevention practices used at construction sites; and
  - iii. Performance of inspections, including the proper completion of required reports and documentation, consistent with the requirements of Part 4.

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<sup>79</sup> If the person requiring training is a new employee who starts after you commence construction activities, you must ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. For emergency-related projects, the requirement to train personnel prior to commencement of construction activities does not apply, however, such personnel must have the required training prior to NOI submission.

<sup>80</sup> If one of the following topics (e.g., installation and maintenance of pollution prevention practices) is not covered by the non-EPA training program, you may consider supplementing the training with the analogous module of the EPA course (e.g., Module 4) that covers the missing topic.

For projects that receive coverage under this permit prior to February 17, 2023, any personnel conducting site inspections pursuant to Part 4 on your site must, at a minimum, be a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the appropriate skills and training to assess conditions at the construction site that could impact stormwater quality, and the appropriate skills and training to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit.<sup>81</sup>

#### **6.4 STORMWATER TEAM'S ACCESS TO PERMIT DOCUMENTS**

Each member of the stormwater team must have easy access to an electronic or paper copy of applicable portions of this permit, the most updated copy of your SWPPP, and other relevant documents or information that must be kept with the SWPPP.

### **7 STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

#### **7.1 GENERAL REQUIREMENTS**

All operators associated with a construction site under this permit must develop a SWPPP consistent with the requirements in Part 7 prior to their submittal of the NOI.<sup>82, 83, 84</sup> The SWPPP must be kept up-to-date throughout coverage under this permit.

If a SWPPP was prepared under a previous version of this permit, the operator must review and update the SWPPP to ensure that this permit's requirements are addressed prior to submitting an NOI for coverage under this permit.

#### **7.2 SWPPP CONTENTS**

At a minimum, the SWPPP must include the information specified in this Part and as specified in other parts of this permit.

##### **7.2.1 All Site Operators.** Include a list of all other operators who will be engaged in construction activities at the site, and the areas of the site over which each operator has control.

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<sup>81</sup> If you receive coverage for a project prior to February 17, 2023, and construction activities for the same project will continue after February 17, 2023, the personnel conducting inspections do not need to take the additional training specified in Parts 6.3a and 6.3b for inspections conducted on the project site. If the same operator obtains coverage for a different project on or after February 17, 2023, personnel conducting inspections would be required to meet the requirements for a qualified person by completing the training in either Part 6.3a or Part 6.3b.

<sup>82</sup> The SWPPP does not establish the effluent limits and/or other permit terms and conditions that apply to your site's discharges; these limits, terms, and conditions are established in this permit.

<sup>83</sup> Where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit's terms and conditions. In other words, if Operator A relies on Operator B to satisfy its permit obligations, Operator A does not have to duplicate those permit-related functions if Operator B is implementing them such that both operators are in compliance with the permit. However, Operator A remains responsible for permit compliance if Operator B fails to take actions necessary for Operator A to comply with the permit. In addition, all operators must ensure, either directly or through coordination with other operators, that their activities do not cause a violation or compromise any other operators' controls and/or any shared controls. See also footnote 60.

<sup>84</sup> There are a number of commercially available products to assist operators in developing the SWPPP, as well as companies that can be hired to help develop a site-specific SWPPP. The permit does not state which are recommended, nor does EPA endorse any specific products or vendors. Where operators choose to rely on these products or services, the choice of which ones to use to comply with the requirements of this Part is a decision for the operator alone.

**7.2.2 Stormwater Team.** Identify the personnel (by name and position) that you have made part of the stormwater team pursuant to Part 6.1, as well as their individual responsibilities, including which members are responsible for conducting inspections.

Include verification that each member of the stormwater team has received the training required by Part 6.2. Include documentation that members of the stormwater team responsible for conducting inspections pursuant to Part 4 have received the training required by Part 6.3. If personnel on your team elect to complete the EPA inspector training program pursuant to Part 6.3a, you must include copies of the certificate showing that the relevant personnel have completed the training and passed the exam. If personnel on your team elect to complete a non-EPA inspector training program pursuant to Part 6.3b, you must include documentation showing that these persons have successfully completed the program and their certification or license is still current. You must also confirm that the non-EPA inspector training program satisfies the minimum elements for such programs in Part 6.3b.

**7.2.3 Nature of Construction Activities.** Include the following:

- a. A description of the nature of your construction activities, including the age or dates of past renovations for structures that are undergoing demolition;
- b. The size of the property (in acres or length in miles if a linear construction site);
- c. The total area expected to be disturbed by the construction activities (to the nearest quarter acre or nearest quarter mile if a linear construction site);
- d. A description of any on-site and off-site construction support activity areas covered by this permit (see Part 1.2.1c);
- e. The maximum area expected to be disturbed at any one time, including on-site and off-site construction support activity areas;
- f. A description and projected schedule for the following:<sup>85</sup>
  - i. Commencement of construction activities in each portion of the site, including clearing and grubbing, mass grading, demolition activities, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;
  - ii. Temporary or permanent cessation of construction activities in each portion of the site;
  - iii. Temporary or final stabilization of exposed areas for each portion of the site; and
  - iv. Removal of temporary stormwater controls and construction equipment or vehicles, and the cessation of construction-related pollutant-generating activities.

<sup>85</sup> If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the operator to meeting these dates. When departures from initial projections are necessary, this should be documented in the SWPPP itself, or in associated records, as appropriate.

- g.** A list and description of all pollutant-generating activities<sup>86</sup> on the site. For each pollutant-generating activity, include an inventory of pollutants or pollutant constituents (e.g., *sediment, fertilizers, pesticides, paints, caulks, sealants, fluorescent light ballasts, contaminated substrates, solvents, fuels*) associated with that activity, which could be discharged in stormwater from your construction site. You must take into account where potential spills and leaks could occur that contribute pollutants to stormwater discharges, and any known hazardous or toxic substances, such as PCBs and asbestos, that will be disturbed or removed during construction;
- h.** Business days and hours for the project;
- i.** If you are conducting construction activities in response to a public emergency (see Part 1.4), a description of the cause of the public emergency (e.g., *mud slides, earthquake, extreme flooding conditions, widespread disruption in essential public services*), information substantiating its occurrence (e.g., *State disaster declaration or similar State or local declaration*), and a description of the construction necessary to reestablish affected public services.

**7.2.4 Site Map.** Include a legible map, or series of maps, showing the following features of the site:

- a.** Boundaries of the property;
- b.** Locations where construction activities will occur, including:
  - i.** Locations where earth-disturbing activities will occur (note any phasing), including any demolition activities;
  - ii.** Approximate slopes before and after major grading activities (note any steep slopes (as defined in Appendix A));
  - iii.** Locations where sediment, soil, or other construction materials will be stockpiled;
  - iv.** Any receiving water crossings;
  - v.** Designated points where vehicles will exit onto paved roads;
  - vi.** Locations of structures and other impervious surfaces upon completion of construction; and
  - vii.** Locations of on-site and off-site construction support activity areas covered by this permit (see Part 1.2.1c).
- c.** Locations of any receiving waters within the site and all receiving waters within one mile downstream of the site's discharge point(s). Also identify if any of these receiving waters are listed as impaired or are identified as a Tier 2, Tier 2.5, or Tier 3 water;
- d.** Any areas of Federally listed critical habitat within the action area of the site as defined in Appendix A;
- e.** Type and extent of pre-construction cover on the site (e.g., vegetative cover, forest, pasture, pavement, structures);
- f.** Drainage patterns of stormwater and authorized non-stormwater before and after major grading activities;

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<sup>86</sup> Examples of pollutant-generating activities include paving operations; concrete, paint, and stucco washout and waste disposal; solid waste storage and disposal; and dewatering activities.

- g.** Stormwater and authorized non-stormwater discharge locations, including:
  - i.** Locations where stormwater and/or authorized non-stormwater will be discharged to storm drain inlets, including a notation of whether the inlet conveys stormwater to a sediment basin, sediment trap, or similarly effective control;<sup>87</sup>
  - ii.** Locations where stormwater or authorized non-stormwater will be discharged directly to receiving waters (i.e., not via a storm drain inlet); and
  - iii.** Locations where turbidity benchmark monitoring will take place to comply with Part 3.3, if applicable to your site.
- h.** Locations of all potential pollutant-generating activities identified in Part 7.2.3g;
- i.** Designated areas where construction wastes that are covered by the exception in Part 2.3.3e.ii because they are not pollutant-generating will be stored;
- j.** Locations of stormwater controls, including natural buffer areas and any shared controls utilized to comply with this permit; and
- k.** Locations where polymers, flocculants, or other treatment chemicals will be used and stored.

**7.2.5 Non-Stormwater Discharges.** Identify all authorized non-stormwater discharges in Part 1.2.2 that will or may occur.

**7.2.6 Description of Stormwater Controls.**

- a.** For each of the Part 2.2 erosion and sediment control requirements, Part 2.3 pollution prevention requirements, and Part 2.4 construction dewatering requirements, as applicable to your site, you must include the following:
  - i.** A description of the specific control(s) to be implemented to meet these requirements;
  - ii.** The design specifications for controls described in Part 7.2.6a.i (including references to any manufacturer specifications and/or erosion and sediment control manuals/ordinances relied upon);<sup>88</sup>
  - iii.** Routine stormwater control maintenance specifications; and
  - iv.** The projected schedule for stormwater control installation/implementation.
- b.** You must also include any of the following additional information as applicable.
  - i. Natural buffers and/or equivalent sediment controls** (see Part 2.2.1 and Appendix F). You must include the following:
    - (a) The compliance alternative to be implemented;
    - (b) If complying with alternative 2, the width of natural buffer retained;

<sup>87</sup> The requirement to show storm drain inlets in the immediate vicinity of the site on your site map only applies to those inlets that are easily identifiable from your site or from a publicly accessible area immediately adjacent to your site.

<sup>88</sup> Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

- (c) If complying with alternative 2 or 3, the erosion and sediment control(s) you will use to achieve an equivalent sediment reduction, and any information you relied upon to demonstrate the equivalency;
- (d) If complying with alternative 3, a description of why it is infeasible for you to provide and maintain an undisturbed natural buffer of any size;
- (e) For "linear construction sites" where it is infeasible to implement compliance alternative 1, 2, or 3, a rationale for this determination, and a description of any buffer width retained and/or supplemental erosion and sediment controls installed; and
- (f) A description of any disturbances that are exempt under Part 2.2.1 that occur within 50 feet of a receiving water.

- ii. **Perimeter controls for a "linear construction site"** (see Part 2.2.3d). For areas where perimeter controls are not feasible, include documentation to support this determination and a description of the other practices that will be implemented to minimize discharges of pollutants in stormwater associated with construction activities.

Note: Routine maintenance specifications for perimeter controls documented in the SWPPP must include the Part 2.2.3c.i requirement that sediment be removed before it has accumulated to one-half of the above-ground height of any perimeter control.

- iii. **Sediment track-out controls** (see Parts 2.2.4b and 2.2.4c). Document the specific stabilization techniques and/or controls that will be implemented to remove sediment prior to vehicle exit.
- iv. **Inlet protection measures** (see Part 2.2.10a). Where inlet protection measures are not required because the storm drain inlets to which your site discharges are conveyed to a sediment basin, sediment trap, or similarly effective control, include a short description of the control that receives the stormwater flow from the site.
- v. **Sediment basins** (see Part 2.2.12). In circumstances where it is infeasible to utilize outlet structures that withdraw water from the surface, include documentation to support this determination, including the specific conditions or time periods when this exception will apply.
- vi. **Treatment chemicals** (see Part 2.2.13), you must include the following:
  - (a) A listing of the soil types that are expected to be exposed during construction in areas of the project that will drain to chemical treatment systems. Also include a listing of soil types expected to be found in fill material to be used in these same areas, to the extent you have this information prior to construction;
  - (b) A listing of all treatment chemicals to be used at the site and why the selection of these chemicals is suited to the soil characteristics of your site;
  - (c) If the applicable EPA Regional Office authorized you to use cationic treatment chemicals for sediment control, include the specific controls and implementation procedures designed to ensure that your use of cationic

treatment chemicals will not lead to a discharge that does not meet water quality standards;

- (d) The dosage of all treatment chemicals to be used at the site or the methodology to be used to determine dosage;
- (e) Information from any applicable Safety Data Sheet (SDS);
- (f) Schematic drawings of any chemically enhanced stormwater controls or chemical treatment systems to be used for application of the treatment chemicals;
- (g) A description of how chemicals will be stored consistent with Part 2.2.13c;
- (h) References to applicable State or local requirements affecting the use of treatment chemicals, and copies of applicable manufacturer's specifications regarding the use of your specific treatment chemicals and/or chemical treatment systems; and
- (i) A description of the training that personnel who handle and apply chemicals have received prior to permit coverage, or will receive prior to use of the treatment chemicals at your site.

**vii. Stabilization measures** (see Part 2.2.14). You must include the following:

- (a) The specific vegetative and/or non-vegetative practices that will be used;
- (b) The stabilization deadline that will be met in accordance with Part 2.2.14;
- (c) If complying with the deadlines for sites in arid, semi-arid, or drought-stricken areas, the beginning and ending dates of the seasonally dry period (as defined in Appendix A)<sup>89</sup> and the schedule you will follow for initiating and completing vegetative stabilization; and
- (d) If complying with deadlines for sites affected by unforeseen circumstances that delay the initiation and/or completion of vegetative stabilization, document the circumstances and the schedule for initiating and completing stabilization.

**viii. Spill prevention and response procedures** (see Parts 1.3.5, 2.3.3c, 2.3.3d, and 2.3.6). You must include the following:

- (a) Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and
- (b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with Part 2.3.6 and established under either 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302, occurs

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<sup>89</sup> See footnote 44.



during a 24-hour period. Contact information must be in locations that are readily accessible and available to all employees.

You may also reference the existence of SPCC plans developed for the construction activity under Section 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that you keep a copy of that other plan on site.<sup>90</sup>

- ix. Waste management procedures** (see Part 2.3.3). Describe the procedures you will follow for handling, storing, and disposing of all wastes generated at your site consistent with all applicable Federal, State, Tribal, and local requirements, including clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste. You must also include the following additional information:

- (a) If site constraints prevent you from storing chemical containers 50 feet away from receiving waters or the other site drainage features as required in Part 2.3.3c.ii(b), document in your SWPPP the specific reasons why the 50-foot setback is not feasible, and how you will store containers as far away as the site permits; and
- (b) If there are construction wastes that are subject to the exception in Part 2.3.3e.ii, describe the specific wastes that will be stored on your site.

- x. Application of fertilizers** (see Part 2.3.5). Document any departures from the manufacturer specifications where appropriate.

**7.2.7 Procedures for Inspection, Maintenance, and Corrective Action.** Describe the procedures you will follow for maintaining your stormwater controls, conducting site inspections, and, where necessary, taking corrective actions, in accordance with Part 2.1.4, Part 4, and Part 5 of this permit, accordingly. Also include:

- a.** The inspection schedule you will follow, which is based on whether your site is subject to Part 4.2 or Part 4.3, or whether your site qualifies for any of the reduced inspection frequencies in Part 4.4;
- b.** If you will be conducting inspections in accordance with the inspection schedule in Part 4.2.2, Part 4.3, or Part 4.4.1b, the location of the rain gauge or the address of the weather station you will be using to obtain rainfall data;
- c.** If you will be reducing your inspection frequency in accordance with Part 4.4.1b, the beginning and ending dates of the seasonally defined arid period for your area or the valid period of drought;
- d.** If you will be reducing your inspection frequency in accordance with Part 4.4.3, the beginning and ending dates of frozen conditions on your site; and
- e.** Any maintenance or inspection checklists or other forms that will be used.

**7.2.8 Procedures for Turbidity Benchmark Monitoring from Dewatering Discharges (if applicable).** If you are required to comply with the Part 3.3 turbidity benchmark

<sup>90</sup> Even if you already have an SPCC or other spill prevention plan in existence, your plans will only be considered adequate if they meet all of the requirements of this Part, either as part of your existing plan or supplemented as part of the SWPPP.

monitoring requirements, describe the procedures you will follow to collect and evaluate samples, report results to EPA and keep records of monitoring information, and take corrective action when necessary. Include the specific type of turbidity meter you will use for monitoring, as well as any manuals or manufacturer instructions on how to operate and calibrate the meter. Describe any coordinating arrangement you may have with any other permitted operators on the same site with respect to compliance with the turbidity monitoring requirements, including which parties are tasked with specific responsibilities. If EPA has approved of an alternate turbidity benchmark pursuant to Part 3.3.2b, include any data and other documentation you relied on to request use of the specific alternative benchmark.

#### **7.2.9 Compliance with Other Requirements.**

- a. Threatened and Endangered Species Protection.** Include documentation required in the Endangered Species Protection section of the NOI in NeT, or the ESA worksheet in Appendix D, supporting your eligibility with regard to the protection of threatened and endangered species and designated critical habitat.
- b. Historic Properties.** Include documentation required in Appendix E supporting your eligibility with regard to the protection of historic properties.
- c. Safe Drinking Water Act Underground Injection Control (UIC) Requirements for Certain Subsurface Stormwater Controls.** If you are using any of the following stormwater controls at your site, document any contact you have had with the applicable State agency<sup>91</sup> or EPA Regional Office responsible for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR § 144 -147. Such controls would generally be considered Class V UIC wells:
  - i.** Infiltration trenches (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);
  - ii.** Commercially manufactured pre-cast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate stormwater flow; and
  - iii.** Drywells, seepage pits, or improved sinkholes (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).

**7.2.10 SWPPP Certification.** Your signatory must sign and date your SWPPP in accordance with Appendix G, Part G.11.

**7.2.11 Post-Authorization Additions to the SWPPP.** Once you are authorized for coverage under this permit, you must include the following documents as part of your SWPPP:

- a.** A copy of your NOI submitted to EPA along with any correspondence exchanged between you and EPA related to coverage under this permit;
- b.** A copy of the acknowledgment letter you receive from NeT assigning your NPDES ID (i.e., *permit tracking number*);

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<sup>91</sup> For State UIC program contacts, refer to the following EPA website: <https://www.epa.gov/uic>.

- c. A copy of this permit (an electronic copy easily available to the stormwater team is also acceptable).

### 7.3 ON-SITE AVAILABILITY OF YOUR SWPPP

You must keep a current copy of your SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA; a State, Tribal, or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).<sup>92</sup>

EPA may provide access to portions of your SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.<sup>93</sup>

If an on-site location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of your construction site.

### 7.4 SWPPP MODIFICATIONS

- 7.4.1** You must modify your SWPPP, including the site map(s), within seven (7) days of any of the following conditions:

- a. Whenever new operators become active in construction activities on your site, or you make changes to your construction plans, stormwater controls, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5. You do not need to modify your SWPPP if the estimated dates in Part 7.2.3f change during the course of construction;
- b. To reflect areas on your site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;
- c. If inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with this permit;
- d. Where EPA determines it is necessary to install and/or implement additional controls at your site in order to meet the requirements of this permit, the following must be included in your SWPPP:
  - i. A copy of any correspondence describing such measures and requirements; and

<sup>92</sup> The SWPPP may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of the SWPPP, refer to the Fact Sheet discussion related to Part 4.7.3.

<sup>93</sup> Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

- ii. A description of the controls that will be used to meet such requirements.
  - e. To reflect any revisions to applicable Federal, State, Tribal, or local requirements that affect the stormwater controls implemented at the site; and
  - f. If applicable, if a change in chemical treatment systems or chemically enhanced stormwater control is made, including use of a different treatment chemical, different dosage rate, or different area of application.
- 7.4.2** You must maintain records showing the dates of all SWPPP modifications. The records must include the name of the person authorizing each change (see Part 7.2.9 above) and a brief summary of all changes.
- 7.4.3** All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix G, Part G.11.b.
- 7.4.4** Upon determining that a modification to your SWPPP is required, if there are multiple operators covered under this permit, you must immediately notify any operators who may be impacted by the change to the SWPPP.

## **8 HOW TO TERMINATE COVERAGE**

Until you terminate coverage under this permit, you must comply with all conditions and effluent limitations in the permit. To terminate permit coverage, you must submit to EPA a complete and accurate Notice of Termination (NOT), which certifies that you have met the requirements for terminating in Part 8.

### **8.1 MINIMUM INFORMATION REQUIRED IN NOT**

- 8.1.1** NPDES ID (i.e., *permit tracking number*) provided by EPA when you received coverage under this permit;
- 8.1.2** Basis for submission of the NOT (see Part 8.2);
- 8.1.3** Operator contact information;
- 8.1.4** Name of site and address (or a description of location if no street address is available); and
- 8.1.5** NOT certification.

### **8.2 CONDITIONS FOR TERMINATING CGP COVERAGE**

You may terminate CGP coverage only if one or more of the conditions in Parts 8.2.1, 8.2.2, or 8.2.3 has occurred. Until your termination is effective consistent with Part 8.5, you must continue to comply with the conditions of this permit.

- 8.2.1** You have completed all construction activities at your site and, if applicable, construction support activities covered by this permit (see Part 1.2.1c), and you have met all of the following requirements:
  - a.** For any areas that (1) were disturbed during construction, (2) are not covered by permanent structures, and (3) over which you had control during the construction activities, you have met the requirements for final vegetative or non-vegetative stabilization in Part 2.2.14c.

To document that you have met these stabilization requirements, you must take either ground or aerial photographs that show your site's compliance with the Part 2.2.14 stabilization requirements and submit them with your NOT. If any portion of your

site is covered by one of the exceptions in Part 2.2.14c.iii, indicate which exception applies and include a supplementary explanation with your photographs that provides the necessary context for why this portion of the site is in compliance with the final stabilization criteria even though it appears to be unstabilized. You are not required to take photographs of every distinct part of your site that is being stabilized, however, the conditions of the site portrayed in any photographs that are submitted must be substantially similar<sup>94</sup> to those of the areas that are not photographed. You must also comply with the following related to these photographs:

- i. Take photographs both before and after the site has met the final stabilization criteria in Part 2.2.14c;
  - ii. All photographs must be clear and in focus, and in the original format and resolution; and
  - iii. Include the date each photograph was taken, and a brief description of the area of the site captured by the photograph (e.g., photo shows application of seed and erosion control mats to remaining exposed surfaces on northeast corner of site).
- b. You have removed and properly disposed of all construction materials, waste and waste handling devices, and have removed all equipment and vehicles that were used during construction, unless intended for long-term use following your termination of permit coverage;
  - c. You have removed all stormwater controls that were installed and maintained during construction, except those that are intended for long-term use following your termination of permit coverage or those that are biodegradable (as defined in Appendix A); and
  - d. You have removed all potential pollutants and pollutant-generating activities associated with construction, unless needed for long-term use following your termination of permit coverage; or
- 8.2.2** You have transferred control of all areas of the site for which you are responsible under this permit to another operator, and that operator has submitted an NOI and obtained coverage under this permit; or
- 8.2.3** Coverage under an individual or alternative general NPDES permit has been obtained.

### **8.3 HOW TO SUBMIT YOUR NOT**

You must use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit an NOT for the 2022 CGP.

To access NeT, go to <https://cdx.epa.gov/cdx>.

Waivers from electronic reporting may be granted as specified in Part 1.4.2. If the EPA Regional Office grants you approval to use a paper NOT, and you elect to use it, you must complete the form in Appendix I.

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<sup>94</sup> Stabilization conditions that are substantially similar would include areas that are using the same type of stabilization measures and that have similar slopes, soils, and topography, and have achieved the same level of stabilization.

**8.4 DEADLINE FOR SUBMITTING THE NOT**

You must submit an NOT within 30 calendar days after any one of the conditions in Part 8.2 occurs.

**8.5 EFFECTIVE DATE OF TERMINATION OF COVERAGE**

Your authorization to discharge under this permit terminates at midnight of the calendar day that a complete NOT is submitted to EPA.

**9 PERMIT CONDITIONS APPLICABLE TO SPECIFIC STATES, INDIAN COUNTRY LANDS, OR TERRITORIES**

The provisions in this Part provide additions to the applicable conditions of this permit to reflect specific additional conditions required as part of the State or Tribal CWA Section 401 certification process, or the Coastal Zone Management Act (CZMA) certification process, or as otherwise established by the permitting authority. The specific additional revisions and requirements only apply to activities in those specific States, Indian country, and areas in certain States with Federal Facilities or areas subject to construction projects by Federal Operators. States, Indian country, and other areas not included in this Part do not have any additions to the applicable conditions of this permit.

**9.1 EPA REGION 1****9.1.1 NHR100000 State of New Hampshire**

- a.** Should the permit coverage for an individual applicant be insufficient to achieve water quality standards, the New Hampshire Department of Environmental Services (NHDES) may prepare additional 401 certification conditions for that applicant. Any additional 401 certification conditions will follow all required NHDES public participation requirements.
- b.** If you disturb 100,000 square feet or more of contiguous area, you must also comply with RSA 485-A:17 and Env-Wq 1500, and, unless exempt, apply for an Alteration of Terrain (AoT) permit from NHDES. This requirement also applies to a lower disturbance threshold of 50,000 square feet or more when construction occurs within the protected shoreline under the Shoreland Water Quality Protection Act (see RSA 483-B and Env-Wq 1400). A permit application must also be filed if your project disturbs an area of greater than 2,500 square feet, is within 50 feet of any surface water, and has a flow path of 50 feet or longer disturbing a grade of 25 percent or greater. Project sites with disturbances smaller than those discussed above, that have the potential to adversely affect state surface waters, are subject to the conditions of an AoT General Permit by Rule (Env-Wq 1503.03).
- c.** You must determine that any excavation dewatering discharges are not contaminated before they will be authorized as an allowable non-stormwater discharge under this permit (see Part 1.2.2 of the Construction General Permit or CGP). In the absence of information demonstrating otherwise, the water is considered uncontaminated if there is no groundwater contamination within 1,000 feet of the groundwater dewatering location. Information on groundwater contamination can be generated over the Internet via the NHDES web site <http://des.nh.gov/> by using the One Stop Data Mapper. For a toxic substance included in the New Hampshire surface water quality standards, see Env-Wq 1703.21 (see <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/Env-Wg>

1700.pdf). If it is determined that the groundwater to be dewatered is near a remediation or other waste site, you must apply for the Remediation General Permit (see <https://www3.epa.gov/region1/npdes/rgp.html>)

- d. As a minimum, you must treat any uncontaminated excavation "dewatering" discharges and "stormwater" discharges, as those terms are defined in Appendix A of the CGP, as necessary, to remove suspended solids and turbidity so that the surface waters receiving the construction discharges<sup>95</sup> meet New Hampshire surface water quality standards for turbidity (Env-Wq 1703.11 and Env-Wq 1703.03(c)(1)c), benthic deposits (Env-Wq 1703.03(c)(1)a), and Env-Wq 1703.08) and foam, debris, scum or other visible substances (i.e., plumes or visual turbidity)<sup>96</sup> (Env-Wq 1703.03(c)(1)b).
- i. For all Construction Activities covered under this CGP, the following shall apply to ensure compliance with the aforementioned regulations for turbidity, benthic deposits and visible substances:
  - Unless otherwise specified, site inspection requirements shall comply with Part 4 of the CGP. As a minimum site inspection frequency shall be in accordance with Part 4.2.2 of the CGP (and Part 4.3.2 of the CGP for sites discharging dewatering water). Site inspection frequency may be reduced in accordance with Part 4.4 of the CGP (Reductions in Inspection Frequency). Monitoring of the receiving water for visible turbidity and benthic sediment deposits shall be conducted each site inspection and results reported in the Inspection Report required in Part 4.7 of the CGP. Should visible turbidity or benthic sediment deposits attributable or partly attributable to your construction activities be present in the receiving water, the "Corrective Actions" specified in Part 5 shall be immediately implemented to correct the water quality standard violations. In addition, daily monitoring (including photographs) of the receiving water shall be conducted until there is no visible turbidity or benthic deposits. Inspection Reports required in Part 4.7 of the CGP shall include, but not be limited to, the distance downstream and the percent of the river width<sup>97</sup> where visible turbidity was observed, and the period of time that the visible turbidity persisted. A copy of the Inspection Report(s) shall be made available to NHDES within 24 hours of receiving a written request from NHDES.
- ii. For Construction Activities, disturbing 5 acres or more of land at any one time (excluding areas that have been completely stabilized in accordance with the final stabilization criteria specified in Part 2.2.14.c of the CGP), the following shall

<sup>95</sup> Construction Discharges include uncontaminated "dewatering" and "stormwater" discharges as those terms are defined in Appendix A of the CGP. Controlled construction discharges are construction discharges where the rate of flow can be regulated such as from a construction settling basin or NHDES approved flocculation system.

<sup>96</sup> For the definition of visual turbidity, see the definition for "Non-Turbid" in Appendix A of the CGP, which states the following: "Non-Turbid" - a discharge that is free from visual turbidity. For the purposes of this permit, visual turbidity refers to a sediment plume or other cloudiness in the water caused by sediment that can be identified by an observer." *[EPA interprets the text of this footnote as intending to reference the Appendix A definitions of "visual turbidity" and "non-turbid" in the final permit.]*

<sup>97</sup> The distance downstream and the percent of river width where visible turbidity (i.e., plume) is observed is required to determine the extent of the river affected and to determine if there was a "zone of passage" (i.e., a portion of the receiving water where there was no visible turbidity where mobile organisms could pass without being adversely impacted). The percent of river width affected is equal 100 multiplied by the width of the plume (in feet) divided by the width of the receiving water (in feet).

apply to ensure compliance with the aforementioned regulations for turbidity, benthic deposits and visible substances.

Item 9.1.1.d.i) above shall apply to all construction discharges and the minimum site inspection frequency shall comply with Part 4.3.1 of the CGP (and Part 4.3.2 of the CGP for sites discharging dewatering water). Site inspection frequency may be reduced in accordance with Part 4.4 of the CGP (Reductions in Inspection Frequency).

With regards to controlled construction discharges, if there is no visible turbidity (i.e., plumes) or benthic deposits, and, in the absence of information demonstrating otherwise, turbidity measurements of less than or equal to 50 nephelometric turbidity units (NTU) in the controlled construction discharges at the outlet prior to mixing with the receiving surface waters, shall be presumed to meet New Hampshire surface water quality standards for the parameters listed above. As a minimum, the controlled construction discharges must be sampled at each site inspection.

If any controlled construction discharge exceeds 50 NTU, or if visible turbidity or benthic sediment deposits attributable or partly attributable to any construction discharge are observed in the receiving water, then the "Corrective Actions" specified in Part 5 of the CGP shall be immediately implemented.

In addition, should such violation occur, and, in order to determine compliance with surface water quality standards for turbidity (Env-Wq 1703.11 and Env-Wq 1703.03(c)(1)c), benthic deposits (Env-Wq 1703.03(c)(1)a), and Env-Wq 1703.08) and foam, debris, scum or other visible substances (Env-Wq 1703.03(c)(1)b)), turbidity monitoring shall be immediately implemented as specified below:

Turbidity samples of the receiving water shall be immediately taken in the receiving water upstream and beyond the influence of the construction activity, and, unless a mixing zone<sup>98</sup> is approved by NHDES, no more than 75 feet downstream of each controlled construction discharge that exceeded 50 NTU and no more than 75 feet downstream of each construction discharge that caused visible turbidity.

Downstream samples shall be taken at locations in the receiving water that are most likely influenced by the discharge (e.g., if visible turbidity (i.e., a plume) is present, the sample shall be taken in the plume). Samples shall be collected a minimum of 2 times per day during the daylight hours at times when construction activities are most likely to cause turbidity in the receiving water and shall continue until the turbidity water quality standards are met in the receiving water (i.e., the difference between the upstream and downstream turbidity level is no greater than 10 NTU).

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<sup>98</sup> Permittees may request a distance greater than 75 feet downstream of a construction discharge for determining compliance with turbidity standards in Class B surface waters, by submitting a mixing zone request to NHDES that complies with Env-Wq 1707.02. If a mixing zone is approved, NHDES is required to include conditions to ensure that the criteria on which the approval is based are met (Env-Wq 1707.03).



If water quality standards are not met during daylight hours on any day, sampling shall resume the next day and continue no fewer than 2 times per day until water quality standards are met. The date, time, location and results of turbidity measurements, as well as a summary identifying the cause of the violations, corrective actions that were implemented, the period of time that the receiving water exceeded turbidity standards and the distance downstream and the percent of the river width where visible turbidity was observed, and the period of time that the visible turbidity persisted, shall be recorded and included in the Inspection Report required in Part 4.7 of the CGP. Turbidity measurements shall be conducted via a field meter in accordance with the requirements for turbidity specified in Table 1B in 40 CFR 136.3 (see 40 CFR § 136.3 Identification of test procedures - Code of Federal Regulations [ecfr.io](https://www.ecfr.io)). Field meters shall be calibrated every day sampling is conducted and prior to the first sample.

- e. Construction site owners and operators are encouraged to consider opportunities for post- construction groundwater recharge using infiltration best management practices (BMPs) during site design and preparation of the SWPPP in order to assure compliance with Env-Wq 1703.03 and Env-Wq 1703.11. If your construction site is in a town that is required to obtain coverage under the NPDES General Permit for discharges from Municipal Separate Storm Sewer Systems (MS4) you may be required to use such practices. The SWPPP must include a description of any on-site infiltration that will be installed as a post-construction stormwater management measure or reasons for not employing such measures such as 1) The facility is located in a wellhead protection area as defined in RSA 485- C:2; or 2) The facility is located in an area where groundwater has been reclassified to GAA, GA1 or GA2 pursuant to RSA 485-C and Env-DW 901; or 3) Any areas that would be exempt from the groundwater recharge requirements contained in Env-Wq 1507.04, including all land uses or activities considered to be a "High-load Area" (see Env-Wq 1502.30). For design considerations for infiltration measures see Env-Wq 1508.06. Note that there may be additional local requirements that fall under the NH MS4 permittee's Authorization to Discharge Permit for those regulated areas.
- f. Appendix F of the CGP contains information regarding Tier 2, or high quality waters in the various states. **[EPA notes that this information has now been moved to <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates>]** Although there is no official list of tier 2 waters for New Hampshire, it can be assumed that all New Hampshire surface waters are tier 2 for turbidity unless 1) the surface water that you are proposing to discharge into is listed as impaired for turbidity in the states listing of impaired waters (see <https://nhdes-surface-water-quality-assessment-site-nhdes.hub.arcgis.com/>) or 2) sampling upstream of the proposed discharge location shows turbidity values greater than 10 NTU (Env-Wq 1703.11). A single grab sample collected during dry weather (no precipitation within 48 hours) is acceptable.
- g. To ensure compliance with RSA 485-C, RSA 485-A, RSA 485-A:13, I(a), Env-Wq 1700 and Env-Wq 302, the following information may be requested by NHDES. This information must be kept on site unless you receive a written request from NHDES that it be sent to the address shown below in 9.1.1.h.

- i. A list of all non-stormwater discharges that occur at the facility, including their source locations and the control measures being used (see Part 1.2.2 of the CGP).
- ii. Records of sampling and analysis required for construction dewatering and stormwater discharges (see 9.1.1.d above).
- h. All required or requested documents must be sent to: NH Department of Environmental Services, Watershed Management Bureau, P.O. Box 95 Concord, NH 03302-0095.

**9.1.2 MAR100000 Commonwealth of Massachusetts (except Indian country)**

- a. All discharges covered by the Construction General Permit shall comply with the provisions pursuant to 314 CMR 3.00, 314 CMR 4.00, 314 CMR 9.00, including applicable construction stormwater standards and 310 CMR 10.00.
- b. Pursuant to 314 CMR 3.11 (2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05(5)(e) to maintain surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, permittees are prohibited from discharging dewatering water under the CGP from sites that are designated as Superfund/CERCLA or RCRA, and must make accommodations to dispose of the dewatering discharges appropriately, such as coverage under the Remediation General Permit (RGP).
- c. Pursuant to 314 CMR 3.11 (2)(a), and in accordance with MassDEP's obligation to protect Outstanding Resource Waters under 314 CMR 4.04(3), applicants seeking coverage under the 2022 CGP that propose to carry out construction activities near Outstanding Resource Waters as identified in 314 CMR 4.06, shall submit to MassDEP for review:
  - i. a copy of the Stormwater Pollution Prevention Plan (SWPPP),
  - ii. a copy of the EPA NOI, and
  - iii. MassDEP's Stormwater BMP Checklist.

For purposes of this review, the permittee shall submit these documents to MassDEP at the same time they are submitted to EPA. Instructions on how to submit these documents to MassDEP and where to find the MassDEP Stormwater BMP Checklist and obtain authorization to discharge can be found here: <https://www.mass.gov/how-to/wm-15-npdes-general-permit-notice-of-intent>.

- d. Pursuant to 314 CMR 3.11 (2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05(5)(e) to maintain surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, applicants that propose to dewater under the 2022 CGP and plan to discharge to certain waters as described below, shall determine that any dewatering discharges are not contaminated by testing the proposed discharge as described below as part of the application for WM15 authorization. Unless otherwise specified, testing described in this section should be conducted using the methods in 40 CFR 136.
  - i. Applicants for sites that plan to discharge to Outstanding Resource Waters as identified in 314 CMR 4.06 shall test one sample of the proposed dewatering discharge water for pH, E. Coli (for discharges to freshwater), fecal coliform (for

discharges to salt water), Enterococci (for discharges to salt water), total suspended solids, oil and grease, total nitrogen, total phosphorus, and all parameters with numeric criteria listed in the Massachusetts Surface Water Quality Standards at 314 CMR 4.05(e). Results shall be reported to MassDEP as part of the WM15 application. To determine if the dewatering discharge could be covered under the 2022 CGP, the effluent at zero dilution must meet numeric water quality criteria. If the effluent does not meet numeric water quality criteria, the applicant shall contact EPA Region 1 to discuss coverage under the Remediation General Permit.

- ii. Applicants for sites that propose to discharge to Public Water Supplies (314 CMR 4.06(1)(d)1) shall also test one sample of the proposed dewatering discharge water for per- and polyfluoroalkyl substances (PFAS), as outlined in the table below. Results shall be reported to MassDEP as part of the WM15 application. If any PFAS compounds are detected, the applicant shall apply for coverage under the NPDES Remediation General Permit for Massachusetts if required.

<b>PFAS Testing Parameters for Discharges to Public Drinking Water Supplies<sup>99</sup></b>	
Perfluorohexanesulfonic acid (PFHxS), grab	Report ng/L
Perfluoroheptanoic acid (PFHpA), grab	Report ng/L
Perfluorononanoic acid (PFNA), grab	Report ng/L
Perfluorooctanesulfonic acid (PFOS), grab	Report ng/L
Perfluorooctanoic acid (PFOA), grab	Report ng/L
Perfluorodecanoic acid (PFDA), grab	Report ng/L

- iii. Applicants for sites that propose to discharge to an impaired water as identified in the most recent final Massachusetts Integrated List of Waters, shall test one sample of the proposed dewatering discharge water for the parameter(s) for which the waterbody is impaired. To determine if the dewatering discharge could be covered under the 2022 CGP, the effluent at zero dilution must meet numeric water quality criteria. If the effluent does not meet numeric water quality criteria, the applicant shall contact EPA Region 1 to discuss coverage under the Remediation General Permit and shall apply for RGP coverage if required.
- iv. For dewatering discharges to all other waters, if any pollutants are known or believed present in the proposed dewatering discharge water, the applicant shall apply for coverage under the NPDES Remediation General Permit for Massachusetts if required. For the purposes of this condition, a pollutant is "known present" if measured above the analytical detection limit using a sufficiently sensitive test method in an environmental sample, and "believed present" if a pollutant has not been measured in an environmental sample but will be added or generated prior to discharge, such as through a treatment process. Consequently, a pollutant is "known absent" if measured as non-detect relative to the analytical detection limit using a sufficiently sensitive test method in an environmental sample, and "believed absent" if a pollutant has not been measured in an environmental sample but will not be added or generated prior to discharge and is not a parameter that applies to the applicable activity category for a site. If any pollutants are known or believed present in the

<sup>99</sup> PFAS testing shall follow established EPA methods 537 or 537.1 for drinking water until EPA Method 3512 for non-potable water becomes available.

proposed dewatering discharge water, the applicant shall test one sample of the proposed dewatering discharge water for the pollutants known or believed to be present. To determine if the dewatering discharge could be covered under the 2022 CGP, the effluent at zero dilution must meet numeric water quality criteria. If the effluent does not meet numeric water quality criteria, the applicant shall contact EPA Region 1 to discuss coverage under the Remediation General Permit.

- e. Pursuant to 314 CMR 3.11 (2)(a), and in accordance with MassDEP's obligation to protect Outstanding Resource Waters under 314 CMR 4.04(3), applicants that propose to dewater under the 2022 CGP and discharge to Outstanding Resource Waters as identified in 314 CMR 4.06, shall submit the SWPPP and associated documents to MassDEP to review. MassDEP shall complete review within 30 days of receipt.
- f. Pursuant to 314 CMR 3.11 (2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05 to maintain surface waters free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to the waterbody, permittees that have been authorized to dewater under the 2022 CGP and that discharge to Outstanding Resource Waters as identified in 314 CMR 4.06 shall carry out daily benchmark monitoring for turbidity<sup>100</sup> for the duration of dewatering. Permittees shall compare the weekly average of the turbidity monitoring results with the established benchmark turbidity value of 25 Nephelometric Turbidity Units (NTU). If a permittee's weekly average turbidity results exceed the benchmark, the operator shall conduct follow-up corrective action to determine the source of the problem and to make any necessary repairs or upgrades to the dewatering controls to lower the turbidity levels. The permittee shall document any corrective action taken in its corrective action log. Furthermore, permittees at these sites shall carry out inspections at higher frequency, specifically, daily inspections of the dewatering discharge treatment for the duration of the discharge. The permittee shall inspect the site for sediment plume or whether a hydrocarbon sheen is visible at the point of discharge, estimate the flow rate at the point of discharge, and inspect the site downstream to assess whether sedimentation is attributable to the dewatering discharges.
- g. Pursuant to 314 CMR 3.11 (2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05 to maintain surface waters free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to the waterbody, permittees shall store materials outside the Base Flood Elevation<sup>101</sup> when feasible to prevent displacing runoff and erosion.
- h. Pursuant to 314 CMR 3.11 (2)(a), and in accordance with MassDEP's obligation to maintain surface waters free from nutrients in concentrations that would cause or contribute to impairment of existing or designated uses under 314 CMR 4.05(5)(c), all applicants who apply for coverage under the 2022 CGP shall follow guidelines on fertilizer application, including use of fertilizer containing no phosphorus, in accordance with 330 CMR 31.00 Plant Nutrient Application Requirements for

<sup>100</sup> Applicants shall follow EPA Method 180.1 to monitor for turbidity

<sup>101</sup> Base Flood Elevation (BFE) is the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the Flood Insurance Rate Map (FIRM) for zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and VE. (Source: <https://www.fema.gov/node/404233>).

Agricultural Land and Non-Agricultural Turf and Lawns. Further, fertilizer shall never be applied to a site when a rain event greater than 0.5 inches is forecast in the next 48 hours.

- i. Pursuant to 314 CMR 3.11 (2)(a), all applicants who apply for coverage under the 2022 CGP and elect to carry out site inspections every 14 days shall also inspect sites within 24 hours of 0.25 inches of precipitation events or greater over 24 hours, or within 24 hours of a discharge that occurred due to snowmelt from 3.25 inches or greater of snow accumulation.<sup>102</sup> During the high flow periods in spring (i.e., months of April to June), inspection frequency shall be increased to once per week for all sites.
  - i. To determine whether 3.25 inches or greater of snow accumulation has occurred at a site, snowfall measurements can be taken at the site,<sup>103</sup> or the operator can rely on similar information from a local weather forecast.
- j. Implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures can help to minimize impacts from stormwater discharges from major storm events such as hurricanes, storm surge, extreme/heavy precipitation,<sup>104</sup> and flood events. Pursuant to 314 CMR 3.11 (2)(a), if such stormwater control measures are already in place due to existing requirements mandated by other state, local or federal agencies, the SWPPP shall include a brief description of the controls and a reference to the existing requirement(s). If the site may be exposed to or has previously experienced such major storm events<sup>105</sup>, additional stormwater control measures that may be considered, and implemented as necessary, include, but are not limited to:
  - i. Reinforce materials storage structures to withstand flooding and additional exertion of force;
  - ii. Prevent floating of semi-stationary structures by elevating to the Base Flood Elevation (BFE) level or securing with non-corrosive device;
  - iii. When a delivery of exposed materials is expected, and a storm is anticipated within 48 hours, delay delivery until after the storm or store materials as appropriate (refer to emergency procedures);

<sup>102</sup> This is the amount of snow that is equivalent to 0.25 inches of rain, based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain. See <https://www.nssl.noaa.gov/education/svrwx101/winter/faq/>.

<sup>103</sup> NOAA's National Weather Service has guidelines on snowfall measurements at [https://www.weather.gov/jkl/snow\\_measurement](https://www.weather.gov/jkl/snow_measurement). These guidelines recommend use of a "snowboard" (a piece of wood about 16 inches by 16 inches) that is placed in an unobstructed part of the site on a hard surface.

<sup>104</sup> Heavy precipitation refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. Heavy precipitation does not necessarily mean the total amount of precipitation at a location has increased—just that precipitation is occurring in more intense or more frequent events.

<sup>105</sup> To determine if your facility is susceptible to an increased frequency of major storm events that could impact the discharge of pollutants in stormwater, you may reference FEMA, NOAA, or USGS flood map products at [https://www.usgs.gov/faqs/where-can-i-find-flood-maps?qt-news\\_science\\_products=0#qt-news\\_science\\_products](https://www.usgs.gov/faqs/where-can-i-find-flood-maps?qt-news_science_products=0#qt-news_science_products).

- iv. Temporarily store materials and waste above the Base Flood Elevation **[EPA notes that it has deleted a footnote reference to the term "Base Flood Elevation" since the same footnote is already included in Part 9.1.2.g, above.]** level;
  - v. Temporarily reduce or eliminate outdoor storage;
  - vi. Temporarily relocate any mobile vehicles and equipment to higher ground;
  - vii. Develop scenario-based emergency procedures for major storms that are complementary to regular stormwater pollution prevention planning and identify emergency contacts for staff and contractors; and
  - viii. Conduct staff training for implementing your emergency procedures at regular intervals.
- k. Pursuant to 314 CMR 3.11 (2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05(5)(e) to maintain surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, permittees who seek coverage under the 2022 CGP and anticipate to carry out dust control shall limit their dust control methodology to using water only and specifically avoid using other techniques, such as solutions containing calcium chloride.
- l. If MassDEP requests a copy of the Stormwater Pollution Prevention Plan (SWPPP) for any construction site at any time, the permittee shall submit the SWPPP to MassDEP within 14 days of such a request. MassDEP may conduct an inspection of any site covered by this permit to ensure compliance with state law requirements, including state water quality standards.

#### **9.1.3 MTR10F000 Areas in the State of Vermont located at a federal facility**

- a. Earth disturbance at any one time is limited to five acres.
- b. All areas of earth disturbance must have temporary or final stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site. Temporary stabilization is not required if precipitation is not forecast and work is to continue in the next 24-hours or if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of two feet or greater (e.g. house foundation excavation, utility trenches). Areas of a construction site that drain to sediment basins are not considered eligible for this exemption, and the exemption applies only to the excavated area itself.
- c. Site inspections on active construction sites shall be conducted daily during the period from October 15 through April 15.
- d. The use of chemical treatments (e.g. polymers, flocculants, and coagulants) for the settling and/or removal of sediment from stormwater runoff associated with construction and construction-related activities requires prior written approval and an approved site and project-specific plan, from the Vermont Agency of Natural Resources. In addition, the use of cationic polymers is prohibited unless approved by the Vermont Agency of Natural Resources under a site and project-specific plan.
- e. Any applicant under EPA's CGP shall allow authorized Vermont Agency of Natural Resources representatives, at reasonable times and upon presentation of credentials, to enter upon the project site for purposes of inspecting the project and determining

compliance with this Certification.

- f. The Vermont Agency of Natural Resources may reopen and alter or amend the conditions of this Certification over the life of the EPA 2022 Construction General Permit when such action is necessary to assure compliance with the VWQS.

## **9.2 EPA REGION 2**

### **9.2.1 NYR10I000 Indian country within the State of New York**

#### **a. Saint Regis Mohawk Tribe**

- i. Any Responsible-Person/Decision-Maker required under the CGP to submit a Notice of Intent (NOI) to EPA for coverage under the CGP, must concurrently submit an electronic copy of the NOI to the SRMT Environmental Division, Water Resource Program Manager. Additionally, an electronic copy of the Notice of Termination (NOT) must be provided within three business days after electronic confirmation is received from EPA that the NOT has been accepted. The NOI and NOT must be electronically provided to the following addresses:

Mr. Tieman W. Smith

Water Resources Program Manager Saint Regis Mohawk Tribe

449 Frogtown Road

Akwesasne, NY 13655 Tiernan.Smith@srmt-nsn.gov 518.358.2272 ext. 5073

- ii. Any Responsible-Person/Decision-Maker that is required as part of the CGP to prepare a Discharge Management Plan (OMP) or Storm Water Management Plan (SWMP) and/or Storm Water Pollution Prevention Plan (SWPPP) must submit an electronic copy of the DMP, SWMP and/or SWPPP to the SRMT Environment Division, Water Resources Program Manager 10 business days prior to the start of construction of any work to be conducted under the CGP. The applicable documents must be provided to the electronic address listed above.
- iii. Any Responsible-Person/Decision-Maker that is required under the CGP to submit an annual report to EPA must submit an electronic copy of the annual report concurrently to the SRMT Water Resource Program. Additionally, any correspondences between the applicant and EPA related to analytical data, written reports, corrective action, enforcement, monitoring, or an adverse incident must likewise be routed to the SRMT Water Resources Program at the above electronic address.
- iv. An "Authorization to Proceed Letter" with site-specific mitigation requirements may be sent out to the permittee when a review of the NOI and OMP, SWMP and /or SWPPP on a case-by-case basis, is completed by the SRMT Environment Division, Water Resource Program. This approval will allow the application to proceed if all mitigation requirements are met.

#### **b. Seneca Nation**

- i. Under Part 1.1.5 of the CGP, the Seneca Nation requests that an applicant must demonstrate that they meet the eligibility criteria listed in Appendix D (certify in your Notice of Intent (NOI) that you meet one of the eligibility criteria [Criterion A-F]) as well as species and critical habitats that are listed under the Seneca Nation's "Fishing and Conservation Laws" and the "Seneca Nation of Indians Comprehensive Conservation Law".

- ii. The Tribal Historic Preservation Office (THPO) was established in 2000 after the Seneca Nation received a recognition letter from the National Park Service (NPS); therefore under Part 1.1.6 of the CGP (Appendix E) and prior to submitting a Notice of Intent (NOI) operators must complete the Nation's THPO, Project Review Form (<https://sni.org/media/246603/sni-thpo-project-review-form.pdf>) and submit the completed form with associated information to the Tribal Historic Preservation Officer at 90 Ohi:yo' Way, Salamanca, NY 14779. Federal agencies engaging in construction activities must provide for construction review by a certified construction reviewer in accordance with 7 Del. C. §§4010 & 4013 and 7 DE Admin. Code 5101, subsection 6.1.6.
- iii. Under Part 1.2 of the CGP, discharges must also follow the Section 13 of the Guide for Construction (Seneca Nation of Indians Source Water Code) and respectively, Council Resolution, dated April 13, 2013 (CN: R-04-13-13-11) to ensure that the health, safety and welfare of the citizens of the Seneca Nation, and all other within the Lands and Territories of the Seneca Nation of Indians, and to facilitate the adequate provisions of water through the elimination or prevention of ground water contamination in the vicinity of wells that supply drinking water for the Nation. The area is known as the Source Water Protection Area (SWPA) and specified activities are regulated within this SWPA, as cited in Section 13 of the Guide for Construction and Section VI, of CN: R-04-13-13-11.
- iv. Under Part 1.4, any operator who seeks coverage of the CGP, and is required to submit a notice of intent NOI and Notice of Termination (NOT) (as necessary) to the EPA for coverage, under Part 1.4.2 must also submit a copy of the NOI to the Seneca Nation's Environmental Protection Department (EPD) within three business days of submittal to the EPA, (address shown below). Respectively, a copy of the NOT (as described under Part 8.3 of the CGP), which certifies that you have met the requirements of Part 8, must be provided within three business days after electronic confirmation is received from the EPA that the NOT has been accepted. In addition to a NOI and NOT, the Seneca Nation (Environmental Protection Department [EPD]) would require an Environmental Impact Assessment (EA) (Long Form), as shown in Section 2 of the Seneca Nation of Indians Laws, Ordinances & Policies (Guide for Construction), to be completed and submitted to the EPD prior to any project to determine whether the impacts from a project would create significant and detrimental effects to the Nation's lands, water (violate WQS), and environment. The NOI, NOT, and EA must be submitted electronically to [epd@sni.org](mailto:epd@sni.org) and provided to the following address:  

Seneca Nation  
Environmental Protection Department (EPD) Attn: Director of EPD  
12837 Route 438  
Irving, NY 14081
- v. Under Part 3.0 of the CGP, discharges must be controlled as necessary to meet applicable WQS. The Seneca Nation is working actively towards finalizing and implementing the; therefore, the EPD would require an applicant to submit or grant access to the permit to obtain information on the impact of effluents on receiving waters, including the capability of receiving waters to support future designated uses and achieve the WQS of the Nation; and to advise prospective dischargers of discharge requirements, and coordinate with the appropriate



permitting agencies. As stated in the Decision Document, under Section 303(c) of the CWA, 33 U.S.C. § 1313(c), states develop, review, and revise (as appropriate) water quality standards for surface waters of the United States. At a minimum, such standards are to include designated water uses, water quality criteria to protect such uses, and an antidegradation policy. 40 C.F.R. § 131.6. In addition, under Section 401 of the CWA states may grant, condition, or deny "certification" for federally permitted or licensed activities that may result in a discharge to the waters of the United States 33 U.S.C. § 1341.

- vi. Under Part 7.2.8(a)(b)(c) and for Part 9 of the CGP, the following Sections of the Seneca Nation's Guide for Construction shall be considered, in conjunction with the CGP:
  - (a) Section 1. Executive Order - To Establish a Policy for Governing Access to Nation Territories and Facilities by Officials of Foreign Government, dated March 31, 2011
  - (b) Section 3. Natural Resources Committee, Sand and Gravel Law (CN: R-06-24-05-08)
  - (c) Section 4. Fishing and Conservation Laws - Part 1.1.5 of the CGP
  - (d) Section 5. Seneca Nation of Indians Comprehensive Conservation Law, adopted January 14, 2012
  - (e) Section 9. Food is Our Medicine (FIOM) Program/Native Planting Policy (CN: R-03-08-14-14)
  - (f) Section 10. Forestry Management Plan (CN: R-08-14-10-23)
  - (g) Section 11. Timber Ordinance #411-092, dated May 8, 1982
  - (h) Section 14. Flood Damage Prevention Local Law, dated September 27, 1988
  - (i) Section 16. Utilities Ordinance No. 87-100
  - (j) Authorizing Emergency Action and Contingency Plan to Restrain Pollution of Nations Waters, (Council Resolution: R-03-01-18-10), dated March 10, 2018  
Seneca Nation of Indians Permit Application for Construction within Waterways Permit, Form NR98-01.00

### **9.3 EPA REGION 3**

#### **9.3.1 DCR100000 District of Columbia**

- a. Discharges authorized by this permit shall comply with the District of Columbia Water Pollution Control Act of 1984, as amended (DC Official Code § 8-103.01 and § 8-103.06, et seq.) to ensure that District of Columbia waters, waters in adjacent and downstream states, and the beneficial uses of these waters will not be harmed or degraded by the discharges.
- b. Discharges authorized by this permit must comply with §§ 1104.1 and 1104.8 of Chapter 11 and the provisions of Chapter 19 of Title 21 of District of Columbia Municipal Regulations in order to attain and maintain designated uses of the District of Columbia waters.

- c. The permittee shall comply with the District of Columbia Stormwater Management and Soil Erosion and Sediment Control regulations in Chapter 5 of Title 21 of the District of Columbia Municipal Regulations.
- d. The permittee shall comply with the District of Columbia Flood Management Control regulations in Chapter 31 of Title 20 of the District of Columbia Municipal Regulations.
- e. The permittee shall submit a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Regulatory Review Division, Department of Energy & Environment, Government of the District of Columbia, 1200 First Street, NE, 5th Floor, Washington, DC 20002, during the review and approval of the permittee's DOEE Erosion and Sediment Control Plan in accordance with the provisions of Chapter 542 of Title 21 of the District of Columbia Municipal Regulations.
- f. Upon request, the permittee shall submit all inspection and monitoring reports as required by this permit and 40 CFR § 122.41 to the Associate Director, Inspection and Enforcement Division, Department of Energy & Environment, Government of the District of Columbia, 1200 First Street, NE, 5th Floor, Washington, DC 20002; telephone (202) 535-2226, or by email at Joshua.Rodriguez@dc.gov.
- g. In the event the permittee intends to discharge dewatering water, groundwater, or groundwater comingled with stormwater from a known contaminated site, the permittee shall contact the Regulatory Review Division, Department of Energy & Environment, Government of the District of Columbia, 1200 First Street, NE, 5th Floor, Washington, DC 20002; telephone (202) 535-2600, or by email at MS4DischargeAuthorization@dc.gov to request authorization to discharge dewatering water, groundwater, or groundwater comingled with stormwater to the District's Municipal Separate Storm Sewer System (MS4) or to a surface water body pursuant to §§ 8-103.02, 8-103.06, and 8-103.07 of the District of Columbia Water Pollution Control Act of 1984, as amended.

**9.3.2 DER10F000 Areas in the State of Delaware located at a federal facility (as defined in Appendix A)**

- a. Federal agencies must submit a sediment and stormwater management plan (SSMP) and receive Department approval prior to undertaking any land clearing, soil movement or construction activity unless conducting an exempt activity.
- b. Federal construction activities are required to have a third-party Certified Construction Reviewer (CCR) perform weekly reviews to ensure the adequacy of construction activities pursuant to the approved SSMP and regulations. Implementation of approved SSMPs requires the daily oversight of construction activity by certified responsible personnel.
- c. Implementation of approved SSMPs requires the daily oversight of construction activity by certified responsible personnel.
- d. A current copy of the SSMP must be maintained at the construction site.
- e. Unless authorized by the Department, not more than 20 acres may be disturbed at any one time.

**9.4 EPA REGION 4**

No additional conditions

## 9.5 EPA REGION 5

### 9.5.1 MIR10I000 Indian country within the State of Minnesota

#### a. Fond du Lac Reservation

- i. New dischargers wishing to discharge to an Outstanding Reservation Resource Water (ORRW)<sup>106</sup> must obtain an individual permit from EPA for storm water discharges from large and small construction activities.
- ii. A copy of the Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the Office of Water Protection at least fifteen (15) days in advance of sending the Notice of Intent to EPA. The SWPPP can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:  
 Fond du Lac Reservation  
 Office of Water Protection  
 1720 Big Lake Road  
 Cloquet, MN 55720
- iii. Copies of the Notice of Intent (NOI) and the Notice of Termination (NOT) must be sent to the Fond du Lac Office of Water Protection at the same time they are submitted to EPA. [The condition helps the Office of Water Protection keep track of when a project is about to start and when it has ended. FDL Water Quality Certification Ordinance, Section 204 (a) (2)].
- iv. If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within the receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. CGP applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling. [This condition helps both the Office of Water Protection and the project proponent in knowing whether or not their erosion control efforts are effective. FDL Water Quality Certification, Section 204 (b) (1)].
- v. Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters which no ambient turbidity data exists. [This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. FDL Water Quality Certification Ordinance, Section 204 (b) (2)].
- vi. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac

<sup>106</sup> Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs.

Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and fauna) diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife. [In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the project proponent to discharges that will not violate our Water Quality Standards. FDL Water Quality Certification Ordinance, Section 204 (a) (7)).

- vii.** Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size. [This condition helps protect water quality and also reminds project proponents of their responsibility in reporting spill events. FDL Water Quality Certification Ordinance, Section 204 (b) (3)).
- viii.** All seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Wild rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in seed mixes. [This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemical in its roots that inhibit the growth of native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to help prevent erosion. FDL Water Quality Certification Ordinance, Section 204 (t) (1)).
- ix.** To prevent the introduction of invasive species, ALL contractors and subcontractors MUST disclose information stating prior equipment location(s) and ALL known invasive species potentially being transported from said location(s). All equipment MUST undergo a high pressure wash (including any equipment mats) BEFORE ENTERING the Fond du Lac Reservation. Personal equipment such as work boots, gloves, vest, etc. MUST be clean of debris, dirt and plant and animal material BEFORE ENTERING the Fond du Lac Reservation. Equipment being transported from known infested areas MUST undergo a high pressure wash as soon as possible after leaving the infested site and again BEFORE ENTERING the Fond du Lac Reservation, to avoid transport of invasive species into areas surrounding the Reservation. Written certification of equipment cleaning MUST be provided to the Fond du Lac Office of Water Protection. Upon arrival, ALL contractor and subcontractor equipment will be inspected by appointed Fond du Lac staff. If equipment is deemed unsatisfactory, the equipment MUST

undergo a high pressure washing until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The contractor shall be held responsible for the control of any invasive species introduced as a result of their project. [This condition requires the project proponent to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive plant species form monocultures, preventing native plants from growing. This situation often leads to cases of erosion, which in turn effects water quality. FOL Water Quality Certification Ordinance, Section 204 (g) (1)].

- x. A copy of this certification MUST be kept by the contractor on-site at all times and be available for viewing by all personnel, including inspectors. [This condition ensures that the information contained in the certification, especially the conditions, is readily available onsite for reference. FOL Water Quality Certification Ordinance, Section 204 (a) (9)].

**b. The Grand Portage Band of Lake Superior Chippewa**

- i. The CGP authorization is for construction activities that may occur within the exterior boundaries of the Grand Portage Reservation in accordance to the Grand Portage Land Use Ordinance. The CGP regulates stormwater discharges associated with construction sites of one acre or more in size. Only those activities specifically authorized by the CGP are authorized by this certification (the "Certification").
- ii. All construction stormwater discharges authorized by the CGP must comply with the Water Quality Standards and Water Resources Ordinance, as well as Applicable Federal Standards (as defined in the Water Resources Ordinance).
- iii. All appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering the Waters of the Reservation. All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of the Waters of the Reservation, including groundwater.
- iv. The 2022 CGP requires inspections and monitoring reports of the construction site stormwater discharges by a qualified person. Monitoring and inspection reports must comply with the minimum requirements contained in the 2022 CGP. The monitoring plan must be prepared and incorporated into the Storm Water Pollution Prevention Plan (the "SWPP"). A copy of the SWPP must be submitted to the Board at least 30 days in advance of sending the requisite Notice of Intent to EPA. The SWPP should be sent to:

Grand Portage Environmental Resources Board  
P.O. Box 428  
Grand Portage, MN 55605

Copies of the Notice of Intent and Notice of Termination required under the General Permit must be submitted to the Board at the address above at the same time they are submitted to the EPA.

- v. If requested by the Grand Portage Environmental Department, the permittee must provide additional information necessary for a case-by-case eligibility determination to assure compliance with the Water Quality Standards and any Applicable Federal Standards. The burden is on the applicant to demonstrate compliance with the Water Quality Standards, the Water Resources Ordinance, and Applicable Federal Standards whether or not the application is ultimately eligible for the CGP.
  - vi. CGP discharges must not cause nuisance conditions as defined in Grand Portage Water Quality Standards.
  - vii. The Board retains full authority to ensure compliance with and to enforce the provisions of the Water Resource Ordinance and Water Quality Standards, Applicable Federal Standards, and these Certification conditions. Nothing herein affects the scope or applicability of other controlling tribal or federal requirements, including but not limited to impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, 54 U.S.C. §§ 300101 et seq.
  - viii. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court.
- c. Leech Lake Band of Ojibwe**
- i. The water quality standards that apply to the construction site are the standards at the time the operator submits its Notice of Intent (NOI) to EPA and the LLBO WRP (see conditions # 2 and # 3).
  - ii. A copy of the Stormwater Pollution Prevention Plan (SWPPP) must be submitted to the LLBO WRP at least 30 days in advance of sending the NOI for the project to EPA. See attached LLBO 401 Water Quality Certification Ordinance. Section 304(a)(1). The SWPPP should be submitted electronically to [Jeff.Harper@llojibwe.net](mailto:Jeff.Harper@llojibwe.net) and by hardcopy sent to:  
Leech Lake Band of Ojibwe  
ATTN: Water Resources Program - 401 Cert  
Division of Resource Management  
190 Sailstar Drive NW  
Cass Lake, Minnesota 56633
  - iii. Copies of the NOI and the Notice of Termination (NOT) must be submitted to the LLBO WRP at the same time they are submitted to EPA. See attached LLBO 401 Water Quality Certification Ordinance, Section 304(a)(2). The NOI and NOT should be submitted electronically to [Jeff.Harper@llojibwe.net](mailto:Jeff.Harper@llojibwe.net) and sent by hardcopy to the address cited in condition # 2.
  - iv. Any and all other conditions listed in Section 304 of the attached LLBO 401 Water Quality Certification Ordinance shall be observed unless the LLBO WRP deems that certain conditions therein are not applicable to the project in need of a permit under this certification.
  - v. A copy of this certification MUST be kept by the contractor on-site at all times and be available for viewing by all personnel, including inspectors.

- vi. Upon consideration of the NOI, if the LLBO WRP finds that the discharge will not be controlled as necessary to meet applicable water quality standards, the LLBO WRP may insist, consistent with Part 3.1 of the CGP, that additional controls are installed to meet applicable water quality standards, or recommend to EPA that the operator obtain coverage under an individual permit.

#### **9.5.2 WIR101000 Indian country within the State of Wisconsin**

##### **a. Bad River Band of Lake Superior Tribe of Chippewa Indians**

- i. Only those activities specifically authorized by the CGP are authorized by this Certification. This Certification does not authorize impacts to cultural properties, or historical sites, or properties that may be eligible for listing as such.
- ii. All projects which are eligible for coverage under the CGP and are located within the exterior boundaries of the Bad River Reservation shall be implemented in such a manner that is consistent with the Tribe's Water Quality Standards (WQS). The Tribe's WQS can be viewed at: [http://www.badriver-nsn.gov/wp-content/uploads/2020/01/NRD\\_WaterQualityStandards\\_2011.pdf](http://www.badriver-nsn.gov/wp-content/uploads/2020/01/NRD_WaterQualityStandards_2011.pdf)
- iii. Operators are not eligible to obtain authorization under the CGP for all new discharges to an Outstanding Tribal Resource Water (OTRW or Tier 3 water). OTRWs, or Tier 3 waters, include the following: Kakagon Slough and the lower wetland reaches of its tributaries that support wild rice, Kakagon River, Bad River Slough, Honest John Lake, Bog Lake, a portion of Bad River, from where it enters the Reservation through the confluence with the White River, and Potato River. OTRWs can be viewed at: <https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>
- iv. An operator proposing to discharge to an Outstanding Resource Water (ORW or Tier 2.5 water) under the CGP must comply with the antidegradation provisions of the Tribe's WQS. ORWs, or Tier 2.5 waters, include the following: a portion of Bad River, from downstream the confluence with the White River to Lake Superior, White River, Marengo River, Graveyard Creek, Bear Trap Creek, Wood Creek, Brunsweiler River, Tyler Forks, Bell Creek, and Vaughn Creek. ORWs can be viewed at: <https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>. The antidegradation demonstration materials described in provision E.4.iii., and included on the antidegradation demonstration template found at: <https://www.badriver-nsn.gov/natural-resources/projectreviews/>, must be submitted to the following address:  
 Bad River Tribe's Natural Resources Department  
 Attn: Water Regulatory Specialist  
 P.O. Box 39 Odanah, WI 54861  
 WaterReg@badriver-nsn.gov
- v. An operator proposing to discharge to an Exceptional Resource Water (ERW or Tier 2 water) under the CGP must comply with the antidegradation provisions of the Tribe's WQS. ERWs, or Tier 2 waters, include the following: any surface water within the exterior boundaries of the Reservation that is not specifically classified as an Outstanding Resource Water (Tier 2.5 water) or an Outstanding Tribal Resource Water (Tier 3 water). ERWs can be viewed at:

<https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>. The antidegradation demonstration materials described in provision E.4.ii., and included on the antidegradation demonstration template found at: <https://www.badriver-nsn.gov/natural-resources/projectreviews/>, must be submitted to the following address:

Bad River Tribe's Natural Resources Department  
Attn: Water Regulatory Specialist  
P.O. Box 39 Odanah, WI 54861  
[WaterReg@badriver-nsn.gov](mailto:WaterReg@badriver-nsn.gov)

- vi. Projects utilizing cationic treatment chemicals within the Bad River Reservation boundaries are not eligible for coverage under the CGP.
- vii. A discharge to a surface water within the Bad River Reservation boundaries shall not cause or contribute to an exceedance of the turbidity criterion included in the Tribe's WQS, which states: Turbidity shall not exceed 5 NTU over natural background turbidity when the background turbidity is 50 NTU or less, or turbidity shall not increase more than 10% when the background turbidity is more than 50 NTU.
- viii. All projects which are eligible for coverage under the CGP within the exterior boundaries of the Bad River Reservation must comply with the Bad River Reservation Wetland and Watercourse Protection Ordinance, or Chapter 323 of the Bad River Tribal Ordinances, including the erosion and sedimentation control, natural buffer, and stabilization requirements. Questions regarding Chapter 323 and requests for permit applications can be directed to the Wetlands Specialist in the Tribe's Natural Resources Department at (715) 682-7123 or [wetlands@badriver-nsn.gov](mailto:wetlands@badriver-nsn.gov).
- ix. An operator of a project, which is eligible for coverage under the CGP, that would result in an allowable discharge under the CGP occurring within the exterior boundaries of the Bad River Reservation must notify the Tribe prior to the commencing earth-disturbing activities. The operator must submit a copy of the Notice of Intent (NOI) to the following addresses at the same time it is submitted to the U.S. EPA:

Bad River Tribe's Natural Resources Department  
Attn: Water Regulatory Specialist  
P.O. Box 39 Odanah, WI 54861  
[WaterReg@badriver-nsn.gov](mailto:WaterReg@badriver-nsn.gov)

Bad River Tribe's Natural Resources Department  
Attn: Tribal Historic Preservation Officer (THPO)  
P.O. Box 39 Odanah, WI 54861  
[THPO@badriver-nsn.gov](mailto:THPO@badriver-nsn.gov)

The operator must also submit a copy of the Notice of Termination (NOT) to the above addresses at the same time it is submitted to the U.S. EPA. Photographs showing the current site conditions must be included as part of the NOT to document the stabilization requirements have been met.

- x. The THPO must be provided 30 days to comment on the project.



- xi.** The operator must obtain THPO concurrence in writing. This written concurrence will outline measures to be taken to prevent or mitigate effects to historic properties. For more information regarding the specifics of the cultural resources process, see 36 CFR Part 800. A best practice for an operator is to consult with the THPO during the planning stages of an undertaking.
- xii.** An operator of a project, which is eligible for coverage under the CGP, that would result in an allowable discharge under the CGP occurring within the exterior boundaries of the Bad River Reservation must submit a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the following address at the same time as submitting the NOI:
  - Bad River Tribe's Natural Resources Department
  - Attn: Water Regulatory Specialist
  - P.O. Box 39 Odanah, WI 54861
  - [WaterReg@badriver-nsn.gov](mailto:WaterReg@badriver-nsn.gov)
- xiii.** Any corrective action reports that are required under the CGP must be submitted to the following address within one (1) working day of the report completion:
  - Bad River Tribe's Natural Resources Department
  - P.O. Box 39 Odanah, WI 54861
  - [WaterReg@badriver-nsn.gov](mailto:WaterReg@badriver-nsn.gov)
- xiv.** An operator of a project, which is eligible for coverage under the CGP, that would result in an allowable discharge under the CGP occurring within the exterior boundaries of the Bad River Reservation must submit a copies of the inspection reports (including photographs) to the following address within 24 hours of completing any site inspection required:
  - Bad River Tribe's Natural Resources Department Attn: Water Regulatory Specialist
  - P.O. Box 39 Odanah, WI 54861
  - [WaterReg@badriver-nsn.gov](mailto:WaterReg@badriver-nsn.gov)
- xv.** An operator shall be responsible for meeting any additional permit requirements imposed by the U.S. EPA necessary to comply with the Tribe's antidegradation policies if the discharge point is located upstream of waters designated by the Tribe.

## **9.6 EPA REGION 6**

### **9.6.1 NMR100000 State of New Mexico, except Indian country**

- a.** In Outstanding National Resource Waters (ONRWs) in New Mexico, no degradation is permitted except in limited, specifically defined instances. Therefore, Operators are not eligible to obtain authorization under this general permit for stormwater discharges to waters classified as ONRWs listed in Paragraph D of 20.6.4.9 New Mexico Administrative Code (NMAC), also referred to as "Tier 3 waters" as defined in Appendix A of this permit. Exception: When construction activities are in response to a public emergency (e.g., wildfire, extreme flooding, etc.) and the related work requires immediate authorization to avoid a threat to public health or safety.
  - i.** Operators who conduct construction activities in response to a public emergency to mitigate an immediate threat to public health or safety shall

adhere to the requirements in 20.6.4.8(A)(3)(c) NMAC, including notifying the New Mexico Environment Department (NMED) within seven days of initiation of the emergency action and providing NMED with a summary of the action taken within 30 days of initiation of the emergency action.

- ii. For all other scenarios, Operators with proposed discharges to ONRWs in New Mexico shall obtain coverage from EPA under an NPDES Individual Permit and will comply with the additional standards and regulations related to discharges to ONRWs in 20.6.4.8(A) NMAC. Additional information is available from:
  - New Mexico Environment Department Surface Water Quality Bureau
  - P.O. Box 5469
  - Santa Fe, NM 87502-5469 Telephone: 505-827-0187
  - <https://www.env.nm.gov/surface-water-quality/wqs/>
  - <https://gis.web.env.nm.gov/oem/?map=swqb>
- b. If construction dewatering activities are anticipated at a construction site and non-stormwater discharges of groundwater, subsurface water, spring water, and/or other dewatering water are anticipated, the Operators/Permittees must complete the following steps:
  - 1. Review the state's Ground Water Quality Bureau Mapper (<https://gis.web.env.nm.gov/GWQB/>) and Petroleum Storage Tank Bureau Mapper (<https://gis.web.env.nm.gov/GWQB/>).

Check if the following sources are located within the noted distance from the anticipated construction dewatering activity. At a minimum, a list of the following potential sources of contaminants and pollutants at the noted distance is to be kept in the SWPPP.

Source of Potential Contamination or Pollutants*	Constituents likely to be required for testing*
Within 0.5 mile of an open Leaking Underground Storage Tank (LUST) site	BTEX (Benzene, Toluene, Ethylbenzene, and Xylene) plus additional parameters depending on site conditions**
Within 0.5 mile of an open Voluntary Remediation site	All applicable parameters or pollutants listed in 20.6.4.13, 20.6.4.52, 20.6.4.54, 20.6.4.97 thru 20.6.4.99, 20.6.4.101 through 20.6.4.899, and 20.6.4.900 NMAC (or an alternate list approved by the NMED-SWQB)*
Within 0.5 mile of an open RCRA Corrective Action Site	
Within 0.5 mile of an open Abatement Site	
Within 0.5 mile of an open Brownfield Site	
Within 1.0 mile or more of a Superfund site or National Priorities List (NPL) site with associated groundwater contamination.	
Construction activity contaminants and/or natural water pollutants	Additional parameters depending on site activities and conditions (Contact NMED-SWQB for an alternate list)*

\*For further assistance determining whether dewatering may encounter contaminated sources, please contact the NMED Ground Water Quality Bureau at 505-827-2965 or NMED Surface Water Quality Bureau (SWQB) at 505-827-0187.

\*\* EPA approved sufficiently sensitive methods must be used. For known PCB sources and analysis, EPA Method 1668C must be used (see <https://www.epa.gov/cwa-methods>).

2. If dewatering activities are anticipated, information on the flow rate and potential to encounter contaminated groundwater, subsurface water, spring water, or dewatering water must be provided directly to NMED at the following address:

NMED Surface Water Quality Bureau

Program Manager, Point Source Regulation  
Section PO Box 5469, Santa Fe, NM 87502

*Please call the SWQB to obtain the appropriate email address (505-827-0187).*

3. In addition, the Operator/Permittee must characterize the quality of the groundwater and subsurface water, spring water, or dewatering water being considered for discharge according to the table above and including dissolved hardness and pH. Considering the contaminant sources listed in the table above, water quality data may already be available. For further assistance, contact the

NMED Surface Water Quality Bureau (505-827-0187), Ground Water Quality Bureau (505-827- 2965), Petroleum Storage Tank Bureau (505-476-4397), or Hazardous Waste Bureau (505-476- 6000).

- i. The Operator/Permittee must submit recent analytical test results (i.e., within the past 5 years) according to the table above, and including dissolved hardness and pH, to the EPA Region 6 Stormwater Permit Contact and the NMED Surface Water Quality Bureau (see contact information in #2 above). If the test data exceed applicable water quality standards, then the groundwater, subsurface water, spring water, or dewatering water cannot be discharged into surface waters under this general permit. Operators/Permittees may submit an NPDES Individual Permit application to treat and discharge to waters of the U.S. or find alternative disposal measures. No discharges to surface waters are allowed until authorized.
  - ii. If the discharge has the potential to affect groundwater (e.g., land application), the Operator/Permittee must submit an NOI to the NMED Ground Water Quality Bureau (see 20.6.2.1201 NMAC – Notice of Intent to Discharge).
4. The Operator/Permittee must document any findings and all correspondence with NMED and EPA in the SWPPP.
- c. Operators who intend to obtain authorization under this permit for new and existing storm water discharges from construction sites must satisfy the following condition:
    - i. The SWPPP must include site-specific interim and permanent stabilization, managerial, and structural solids, erosion and sediment control best management practices (BMPs) and/or other controls that are designed to prevent to the maximum extent practicable an increase in the sediment yield and flow velocity from pre-construction, pre-development conditions to assure that applicable standards in 20.6.4 NMAC, including the antidegradation policy, and TMDL waste load allocations (WLAs) are met. This requirement applies to discharges both during construction and after construction operations have been completed. The SWPPP must identify and document the rationale for selecting these BMPs and/or other controls. The SWPPP must also describe design specifications, construction specifications, maintenance schedules (including a long-term maintenance plan), criteria for inspections, and expected performance and longevity of these BMPs. For sites greater than 5 acres in size, BMP selection must be made based on the use of appropriate soil loss prediction models (i.e. SEDCAD, RUSLE, SEDIMOT, MULTISED, etc.) OR equivalent generally accepted (by professional erosion control specialists) soil loss prediction tools.
    - ii. For all sites, the Operator(s) must demonstrate, and include documentation in the SWPPP, that implementation of the site-specific practices will ensure that the applicable standards and TMDL WLAs are met, and will result in sediment yields and flow velocities that, to the maximum extent practicable, will not be greater than the sediment yield levels and flow velocities from preconstruction, pre-development conditions.
    - iii. All SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g., CPESC certified, engineers with appropriate training) erosion control specialists familiar with the use of soil loss prediction models and design of erosion and sediment control systems based on these models (or equivalent soil

loss prediction tools). Qualifications of the preparer (e.g., professional certifications, description of appropriate training) must be documented in the SWPPP. The Operator(s) must design, implement, and maintain BMPs in the manner specified in the SWPPP.

NMED supports the use of EPA's small residential lot template if a site qualifies to use it as explained in the permit, as long as it is consistent with the above requirements. NMED's requirement does not preclude small residential sites from using the template, but it may require an additional short paragraph to justify the selection of specific BMPs for the site.

- d. Operators must notify NMED when discharges of toxic or hazardous substances or oil from a spill or other release occurs - see Emergency Spill Notification Requirements, Part 2.3.6 of the permit. For emergencies, Operators can call 505-827-9329 at any time. For non-emergencies, Operators can call 866-428-6535 (voice mail 24-hours per day) or 505-476-6000 during business hours from 8am-5pm, Monday through Friday. Operators can also call the NMED Surface Water Quality Bureau directly at 505-827-0187.
- e. Operators of small construction activities (i.e., 1-5 acres) are not eligible to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on Item C.3 of Appendix C (Equivalent Analysis Waiver) in the State of New Mexico.

**9.6.2 NMR10I000 Indian country within the State of New Mexico, except Navajo Reservation Lands that are covered under Arizona permit AZR10000I and Ute Mountain Reservation Lands that are covered under Colorado permit COR10000I.**

**a. Nambe Pueblo**

- i. The operator must provide a copy of the Notice of Intent (NOI) and Notice of Termination (NOT) to the Nambe Pueblo Governor's Office at the same time it is provided to the US Environmental Protection Agency. The NOI and NOT should be provided to the following address:  
Office of the Governor Nambe Pueblo  
ISA NPI02 WEST  
Nambe Pueblo, New Mexico 87506
- ii. The operator must provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) to Nambe Pueblo at the same time it is submitted to the EPA, either by email to [governor@nambepueblo.org](mailto:governor@nambepueblo.org) or mailed to the above address.
- iii. The operator must provide copies of inspection reports, a copy of the corrective action log, and modifications made to the SWPPP as a result of inspection findings, upon request by the Nambe Pueblo Department of Environmental and Natural Resources or Nam be Governor.

**b. Ohkay Owingeh Tribe**

- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Ohkay Owingeh Office of Environmental Affairs, a copy of NOI modifications and the Notice of Termination (NOT), must be provided within three business days after EPA provides electronic confirmation that the submission has been received. The NOI and NOT must be provided to the following address:

Naomi L. Archuleta - Environmental Programs Manager Ohkay Owingeh  
 Office of Environmental Affairs  
 P.O. Box 717  
 Ohkay Owingeh, NM 87566  
[naomi.archuleta@ohkay.org](mailto:naomi.archuleta@ohkay.org)

Noah Kaniatobe - Environmental Specialist Ohkay Owingeh, Office of  
 Environmental Affairs  
 P.O. Box 717  
 Ohkay Owingeh, NM 87566  
[noah.kaniatohe@ohkay.org](mailto:noah.kaniatohe@ohkay.org)

- ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Storm Water Pollution Prevention Plan (SWPPP) to Ohkay Owingeh Office of Environmental Affairs at the same time that the NOI is submitted to the tribe (see contact information listed above).
- iii. Following each incident where the operator takes a corrective action the operator must provide the corrective action log to the Ohkay Owingeh Office of Environmental Affairs.
- iv. The operator must notify Ohkay Owingeh Office of Environmental Affairs within 24 hours, in the event of an emergency spill in addition to the notification requirements at Part 2.3.6 of the CGP. Please contact: Ohkay Owingeh Tribal Police Department at 505.852.2757.

*Please contact:*  
 Ohkay Owingeh  
 Tribal Police Department  
 505.852.2757

#### **c. Pueblo of Isleta**

- i. All operators obtaining permit coverage under the EPA CGP must submit a copy of the certified Notice of Intent (NOI) to the Pueblo of Isleta at the same time it is submitted to EPA for projects occurring within the exterior boundaries of the Pueblo of Isleta. Additionally, a copy of NOI modifications and the Notice of Termination (NOT), must be provided within three business days after EPA provides electronic confirmation that the submission has been received. The Notices must be provided to the following address:  
 Water Quality Control Officer Pueblo of Isleta  
 Environment Department PO Box 1270  
 Isleta NM 87022  
 505-869-7565  
[WQCO@isletapueblo.com](mailto:WQCO@isletapueblo.com)
- ii. The operator must notify the Pueblo of Isleta's Dispatch at 505-869-3030 as soon as possible and the Pueblo of Isleta Water Quality Control Officer within 10 hours, in the event of a spill of hazardous or toxic substances or if health or the

environment become endangered in addition to the notification requirements at Part 2.3.6 and at I.12.6.1 of the CGP.

- iii. All operators obtaining permit coverage under the EPA CGP must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Pueblo of Isleta Water Quality Control Officer at the above address, 30 days prior to submitting the certified NOI to EPA. If the electronic file is too large to send through e-mail, a zip file or flash drive may be submitted.
- iv. All operators obtaining permit coverage under the EPA CGP must give 2 days advance notice to the Pueblo of Isleta Water Quality Control Officer of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
- v. All operators obtaining permit coverage under the EPA CGP must post a sign or other notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road or tribal road that is nearest to the active part of the construction site. The sign must be maintained on-site from the time construction activities begin until final stabilization is met.
- vi. Erosion and sediment controls shall be designed to retain sediment on-site and project-generated waste materials that have the potential to discharge pollutants shall not be placed on open soil or on a surface that is not stabilized. Volumes of sediment over five (5) cubic yards must be removed from the active construction site; additionally, if sediment is placed for disposal within the exterior boundaries of the Pueblo of Isleta, disposal must be within a tribally approved sediment disposal site.

**d. Pueblo of Laguna**

- i. All operators obtaining permit coverage under the EPA CGP must submit an electronic copy of the certified (signed) Notice of Intent (NOI) to the Pueblo of Laguna's Environmental & Natural Resources Department (ENRD) within three business days of submittal to the EPA. Additionally, a copy of NOI modifications and the Notice of Termination (NOT), must be provided within three business days after the EPA provides electronic confirmation that the submission has been received. The NOI and NOT must be electronically submitted to [info.environmental@pol-nsn.gov](mailto:info.environmental@pol-nsn.gov).
- ii. All operators obtaining permit coverage under the EPA CGP must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Pueblo of Laguna's ENRD 14 days prior to the submittal of the NOI (see contact information listed above).
- iii. The operator must provide copies of corrective actions logs and modifications made to the SWPPP as a result of inspection findings to the Pueblo of Laguna ENRD (see contact information above).
- iv. In addition to the notification requirements of Part 2.3.6 of the CPG **[EPA interprets this intending to refer to the CGP]**, the operator must notify the Pueblo of Laguna ENRD at 505-552-7512 in the event of an emergency spill as soon as possible.

**e. Pueblo of Sandia. The following conditions apply only to discharges on the Pueblo of Sandia Reservation:**

- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Pueblo of Sandia Environment Department concurrently with submittal to the EPA. Additionally, a copy of NOI modifications and the Notice of Termination (NOT), must be provided concurrently with submittal to the EPA. The NOI and NOT must be provided electronically to the following addresses:  
Electronic Addresses:  
Amy Rosebrough (Water Quality Manager): [rosebrough@sanidapueblo.nsn.us](mailto:rosebrough@sanidapueblo.nsn.us)  
Greg Kaufman (Environment Director): [gkaufman@sandiapueblo.nsn.us](mailto:gkaufman@sandiapueblo.nsn.us)
  - ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Pueblo of Sandia Environment Department at least 14 days prior to submittal of the NOI to the Pueblo (see contact information listed above).
  - iii. If requested by the Pueblo of Sandia Environment Department, the permittee must provide additional information necessary on a case-by-case basis to assure compliance with the Pueblo of Sandia Water Quality Standards and/or applicable Federal Standards.
  - iv. An "Authorization to Proceed Letter" with site specific mitigation requirements may be sent out to the permittee when a review of the NOI and SWPPP, on a case-by-case basis, is completed by the Pueblo of Sandia Environment Department. This approval will allow the application to proceed if all mitigation requirements are met.
  - v. The Pueblo of Sandia will not allow Small Construction Waivers (Appendix C) to be granted for any small construction activities.
  - vi. The operator must provide copies of inspection reports, a copy of the corrective action log, and modifications made to the SWPPP as a result of inspection findings to the Pueblo of Sandia Environment Department upon request. An inspection report and corrective action log must be submitted to the Pueblo within 3 days of any inspection that results in corrective action (see contact information listed above).
  - vii. The operator must notify the Pueblo of Sandia within 24 hours in the event of an emergency spill, in addition to the notification requirements at Part 2.3.6 of the COP (see contact information listed above).
  - viii. Before submitting a Notice of Termination (NOT) to the EPA, permittees must clearly demonstrate to the Pueblo of Sandia Environment Department through a site visit or documentation that requirements for site stabilization have been met and any temporary erosion control structures have been removed. A short letter stating that the NOT is acceptable and all requirements have been met will be sent to the permittee to add to the permittee's NOT submission to the EPA.
- f. Pueblo of Santa Ana. The following conditions apply only to discharges on the Pueblo of Santa Ana Reservation:**
- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Pueblo's Department of Natural Resources within three business days of submittal to EPA. Additionally, a copy of NOI modifications and the Notice of Termination (NOT), must be



provided within three business days after EPA provides electronic confirmation that the submission has been received. The NOI and NOT must be provided to the following address:

Regular U.S. Delivery Mail:

Pueblo of Santa Ana

Department of Natural Resources Water Resources Division

Attn: Andrew Sweetman 02 Dove Rd

Santa Ana Pueblo, NM 87004

Electronically:

Andrew Sweetman

Water Resources Division Manager Andrew.Sweetman@santaana-nsn.gov

Tammy Montoya Hydrologist

Tammy.Montoya@santaana-nsn.gov

- ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Pueblo's Department of Natural Resources at the same time that the NOI is submitted to the tribe (see contact information listed above).
- iii. The operator must provide copies of inspection reports, a copy of the corrective action log, and modifications made to the SWPPP as a result of inspection findings, upon request by the Pueblo's Department of Natural Resources.
- iv. The operator must notify the Pueblo's Department of Natural Resources within 24 hours in the event of an emergency spill, in addition to the notification requirements at Part 2.3.6 of the CGP.

**g. Pueblo of Taos**

- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Taos Pueblo Environmental Office and Taos Pueblo Governor's Office within three business days of submittal to EPA. Additionally, a copy of NOI modifications and the Notice of Termination (NOT), must be provided within three business days after EPA provides electronic confirmation that the submission has been received. The NOI and NOT must be provided to the following addresses:  
 Honorable Governor of Taos Pueblo PO Box 1846  
 Taos, New Mexico 87571  
  
 Taos Pueblo Environmental Office PO Box 1846  
 Taos, New Mexico 87571
- ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Taos Pueblo Environmental Office when the NOI is submitted to the tribe. Electronic copy of SWPPP downloaded on flash drive may be sent to the above address for the Taos Pueblo Environmental Office.
- iii. The operator must provide a copy of the corrective action log following each corrective action undertaken and modifications made to the SWPPP as a result of

a corrective action to the Taos Pueblo Environmental Office at address listed above.

**h. Pueblo of Tesuque.**

- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Pueblo of Tesuque Department of Environment and Natural Resources (DENR) and the Pueblo's Governor within three business days of submittal to EPA. Additionally, a copy of any NOI modifications and the Notice of Termination (NOT), must be provided within three business days after EPA provides electronic confirmation that the submission has been received. The NOI and NOT must be provided to the following address:

Governor Mark Mitchell Pueblo of Tesuque  
20 TP 828  
Santa Fe, NM 87506 governor@pueblooftesuque.org

Sage Mountain.flower Pueblo of Tesuque  
Department of Environment and Natural Resources Director  
20 TP 828

- ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Stormwater Pollution Prevention Plan (SWPPP) to Pueblo of Tesuque DENR and the Pueblo's Governor at the same time that the NOI is submitted to the EPA (see contact information listed above).
- iii. The operator must provide a copy of the corrective action log, and any modifications made to the SWPPP as a result of inspection findings, or upon request by the Pueblo of Tesuque DENR.
- iv. The operator must notify the Pueblo of Tesuque DENR within 24 hours in the event of an emergency spill, in addition to the notification requirements at Part 2.3.6 of the CGP (see contact information listed above).

**i. Santa Clara Indian Pueblo.**

- i. All operators obtaining permit coverage under the EPA CGP, must submit a copy of the certified (signed) Notice of Intent (NOI) to the Santa Clara Pueblo Office of Environmental Affairs at the same time the NOI is submitted to the U.S. EPA. Additionally, a copy of the NOI modifications and the Notice of Termination (NOT), must be provided at the same time after electronic confirmation is received from EPA that the NOT has been accepted. The NOI and NOT shall be provided to the following address in electronic format:

Dino Chavarria,  
Santa Clara Pueblo  
Office of Environmental Affairs  
dinoc@santaclarapueblo.org

- ii. All operators obtaining permit coverage under the EPA CGP, must submit an electronic copy of the Stormwater Pollution Prevention Plan to the Santa Clara Pueblo Office of Environmental Affairs at the same time the NOI is submitted to the U.S. EPA (see contact information listed above).

- iii. The operator must notify the Santa Clara Pueblo Office of Environmental Affairs at the address above within 24 hours, in the event of an emergency spill, in addition to the notification requirements at Part 2.3.6 of the CGP

**9.6.3 OKR10I000 Indian country within the State of Oklahoma, except areas of Indian country covered by an extension of state program authority pursuant to Section 10211 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA).**

**a. Pawnee Nation. The following conditions apply only to discharges within Pawnee Indian country:**

- i. Copies of the Notice of Intent (NOI) and Notice of Termination (NOT) must be provided to the Pawnee Nation at the same time it is submitted to the Environmental Protection Agency to the following address:  
Pawnee Nation Department of Environmental Conservation and Safety  
P.O. Box 470  
Pawnee, OK 74058  
Or email to [dnrs@pawneenation.org](mailto:dnrs@pawneenation.org)
- ii. An electronic copy of the Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the Pawnee Nation Department of Environmental Conservation and Safety at the same time the NOI is submitted.
- iii. The operator must provide access to the site for inspections and for copies of inspection reports, copy of the corrective action log and modifications, made to the SWPPP because of inspection findings, upon request by the Pawnee Nation DECS.
- iv. The Pawnee Nation Department of Environmental Conservation and Safety must be notified at 918.762.3655 immediately upon discovery of any noncompliance with any provision of the permit conditions.

**9.6.4 OKR10F000 Discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, or the Oklahoma Department of Agriculture and Forestry including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC Groups 13 and 46, and SIC codes 492 and 5171), and point source discharges associated with agricultural production, services, and silviculture (includes SIC Groups 01, 02, 07, 08, 09).**

- a. For activities located within the watershed of any Oklahoma Scenic River, including the Illinois River, Flint Creek, Barren Fork Creek, Upper Mountain Fork, Little Lee Creek, and Lee Creek or any water or watershed designated "ORW" in Oklahoma's Water Quality Standards, this permit may only be used to authorize discharges from temporary construction activities. Certification is denied for any on-going activities such as sand and gravel mining or any other mineral mining.
- b. For activities located within the watershed of any Oklahoma Scenic River, including the Illinois River, Flint Creek, Barren Fork Creek, Upper Mountain Fork, Little Lee Creek, and Lee Creek or any water or watershed designated "ORW" in Oklahoma's Water Quality Standards, certification is denied for any discharges originating from support activities, including, but not limited to, concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, or borrow areas.

- c. Dewatering discharges into sediment or nutrient-impaired waters, and waters identified as Tier 2, Tier 2.5, or Tier 3 (OAC 785:46-13) shall be controlled to meet water quality standards for turbidity in those waters as follows:
  - i. Cool Water Aquatic Community/Trout Fisheries: 10 NTUs (OAC 785: 45-5-12(f)(7)(A)(i))
  - ii. Lakes: 25 NTUs (OAC 785: 45-5-12(f)(7)(A)(ii))
  - iii. In waters where background turbidity exceeds these values, turbidity from dewatering discharges should be restricted to not exceed ambient levels (OAC 785: 45-5-12(f)(7)(B))

#### **9.7 EPA REGION 7**

No additional conditions.

#### **9.8 EPA REGION 8**

##### **9.8.1 MTR10I000 Indian country within the State of Montana**

##### **a. Blackfeet Nation.**

- i. The Applicant and applicants for projects authorized under the NWP should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority. Primary relevant tribal permit will be ALPO (Ordinance 117). Others may apply. It is the applicant's responsibility to know the tribal and local ordinances and complete all necessary permissions before they can commence work.
- ii. If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the Applicant may request an individual certification from Blackfeet. An individual certification request must follow the requirements outlined in 40 CFR 121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.
- iii. Copies of this certification should be kept on the job site and readily available for reference.
- iv. If the project is constructed and/or operated in a manner not consistent with the applicable NWP, general conditions, or regional conditions, the permittee may be in violation of this certification.
- v. Blackfeet and EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- vi. This NWP Reissuance does not reduce Tribal authority under any other rule.
- vii. The project, including any stream relocations and restoration, must be built as shown and as otherwise described in the application, the construction plans, cross sections, mitigation plans and other supporting documents submitted to this office. Impacts to aquatic systems and restoration efforts will be monitored by an appropriate aquatic resource professional to ensure that disturbed areas are restored to at least their original condition.
- viii. All existing water uses will be fully maintained during and after the completion of the project. (If applicable)

- ix.** Where practicable, perform all in-channel and wetland work during periods of low flow or drawn—down or when dry
- x.** Equipment staging areas must be located out of all delineated wetlands
- xi.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during and immediately after construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or in a wetland, must be permanently stabilized as soon as possible
- xii.** Materials such as piling, culverts, sandbags, fabric, mats, timbers used for temporary facilities in wetlands or below the high- water mark of Waters of the US must be free from oil, gas, excess dirt, loose paint and other pollutants.
- xiii.** Equipment staging areas in wetlands or in stream or river channels must be placed on mats, or other measures must be taken to minimize soil disturbance and compaction.
- xiv.** Clearing of riparian or wetland vegetation for the sole purpose of constructing work bridges, detours, staging areas or other temporary facilities must be limited to the absolute minimum necessary. When temporary impacts to native riparian or wetland vegetation are unavoidable, it must be mowed or cut above ground with the topsoil and root mass left intact.
- xv.** Remove all temporary fills and structures in the entirety when they are no longer needed. Restore affected areas to the appropriate original and planned contours where possible. Re-vegetate disturbed areas with appropriate native species when native species are impacted.
- xvi.** Construction methods and best management practices (BMPs) must minimize aquatic resource impacts to the maximum extent possible. Any BMPs described in the Joint Application must be followed. BMPs should include installation and maintenance of sediment control measures; separation, storage and reuse of any topsoil; and recovery of all disturbed areas where possible. All best management practices must in place prior to the onset of construction or as soon as practicable during the construction process.
- xvii.** Best available technology and/or best management practices must be utilized to protect existing water uses and maintain turbidity and sedimentation at the lowest practical level.
- xviii.** Applicant/contractor should manage disturbed streambank topsoil in a manner that optimizes plant establishment for the site.
- xix.** When operating equipment or otherwise undertaking construction in wetlands and water bodies the following conditions apply:
  - (a) Work should be done in dry conditions if possible.
  - (b) All equipment is to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid or other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being allowed on the project site. Leaks that occur after the equipment is moved to the project site will be fixed the same day or the next day or removed from the project area. The equipment is not allowed to continue operation once a leak is discovered.

- (c) All equipment is to be inspected and cleaned before and after use to minimize the spread or introduction of invasive or undesirable species.
  - (d) Construction equipment shall not operate below the existing water surface except as follows:
    - Impacts from construction should be minimized through the use of best management practices submitted in the permit application.
    - Essential work below the waterline shall be done in a manner to minimize impacts to aquatic system and water quality.
  - (e) Containment booms and/or absorbent material must be available onsite. Any spills of petroleum products must be reported to the Army Corps, Blackfeet Nation BEO Office and the US EPA within 24 hours.
- xx.** Upland, riparian and in-stream vegetation should be protected except where its removal is necessary for completion of work. Revegetation should be completed as soon as possible. Applicant/contractor should revegetate disturbed soil in a manner that optimizes plant establishment for the site. Revegetation must include topsoil replacement, planting, seeding, fertilization, liming and weed-free mulching as necessary. Applicant must use native plant material and soils where appropriate and feasible. This certification does not allow for the introduction of non-native flora and fauna. All disturbed surface areas must be restored to pre-construction contours and elevation.
- xxi.** Spoils piles should not be placed or stored within the delineated wetlands or streams unless protected by a temporary structure designed to divert and handle high flows that can be anticipated during permit activity. Spoils piles should be placed on landscaping fabric or some other material to separate spoils material and allow retrieval of spoils material with minimal impact.
- xxii.** Impacts to wetlands shall not exceed 4.92 acres.
- xxiii.** Any unexpected and additional impacts to waters of the US should be reported to the
- xxiv.** Army Corps, Blackfeet Environmental Office Water Quality Coordinator and the US EPA.
- xxv.** All instream and stream channel reconstruction work must be completed before the stream is diverted into the new channel.
- xxvi.** Any temporary crossings, bridge supports, cofferdams, or other structures that are necessary during permit activity should be designed to handle high flows that can be anticipated during permit activity. All temporary structures should be completely removed from the water body at the conclusion of the permitted activity and the area restored to a natural function and appearance.
- xxvii.** The certification does not authorize any unconfined discharge of liquid cement into the waters of the United States. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the water body.
- xxviii.** BMPs shall include application of certified weed-free straw or hay across all disturbed wetland areas that are temporarily impacted; installation and maintenance of sediment control measures during construction and if necessary, after construction is completed; use of heavy mud mats if necessary; separation,

storage and reuse of all streambank topsoil and wetland topsoil, as appropriate; and recovery of all disturbed wetland and streambank areas where possible. All conditions set by the Blackfeet Tribe and US Army Corps must be followed.

- xxix.** All applicants, including federal agencies, must notify EPA and the Blackfeet Environmental Office of the use of all NWP for which certification has been granted prior to commencing work on the project. Notifications must include:
- (a) project location (lat. Long., exact point on map);
  - (b) NWP that will be used and the specific activity that will be authorized under the NWP;
  - (c) amount of permanent and temporary fills;
  - (d) a short summary of the proposed activity, and all other federal, state, tribal or local permits or licenses required for the project;
  - (e) complete contact information of both the applicant and contractor (name, name of the company or property if applicable, telephone, mobile, and email); and,
  - (f) Summary of best management practices that will be used.
  - (g) A summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues.
  - (h) Notify Blackfeet and EPA at least 7 days before the completion of construction and operations begin.
- xxx.** Point source discharges may not occur: (1) in fens, bogs or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; or (3) hanging gardens.
- xxxi.** Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may enter into waters of the U.S.
- xxxii.** Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants.
- xxxiii.** Water used in dust suppression shall not contain contaminants that could violate water quality standards.
- xxxiv.** Erosion control matting that is either biodegradable blankets or loose-weave mesh must be used to the maximum extent practicable.
- xxxv.** All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned and effectively decontaminated before they are used on the project.

- xxxvi.** Vegetation should be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities should be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site.
- xxxvii.** Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary. Where practical, stockpile weed- seed-free topsoil and replace it on disturbed areas. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities.
- xxxviii.** Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.
- xxxix.** Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the extent practicable.
- xl.** The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects.
- xli.** Any decision-maker that is required under 7.0 of the CGP to prepare a Stormwater Pollution Prevention Plan (SWPPP), must submit an electronic copy of the SWPPP to the Blackfeet Environmental Office at least 30 days before construction starts for review and approval. Any modifications to the SWPPP should be submitted to the Blackfeet Environmental Office.
- xlili.** Any Decision-maker required under Part 1.4 of the CGP to submit a Notice of Intent (NOI) to EPA for coverage under the CGP, must submit a copy of the NOI to the Blackfeet Environmental Office within three business days of submittal to EPA. Additionally, a copy of the Notice of Termination (NOT) must be provided within three business days after electronic confirmation is received from EPA that the NOT has been accepted. The NOI and NOT must be provided to the following address Gerald Wagner, Blackfeet Environmental Office Director.  
62 Hospital Drive, Browning, MT 59417  
[beo.director@gmail.com](mailto:beo.director@gmail.com)

**b. Fort Peck Tribes.**

- i.** Any Decision-maker required under Part 1.4 of the CGP to submit a Notice of Intent (NOI) to EPA for coverage under the CGP, must submit a copy of the NOI to the Fort Peck Tribes Office of Environmental Protection within three business days of submittal to EPA. Additionally, a copy of the Notice of Termination (NOT) must be provided within three business days after electronic confirmation is received from EPA that the NOT has been accepted. The NOI and NOT must be provided to the following address:  
Martina Wilson, Office of Environmental Protection Director  
501 Medicine Bear Rd Poplar, MT 59255  
[martinawilson@fortpecktribes.net](mailto:martinawilson@fortpecktribes.net)
- ii.** Any Decision-maker that is required under Part 7.0 of the CGP to prepare a Stormwater Pollution Prevention Plan (SWPPP), must submit an electronic copy of the SWPPP to the Fort Peck Tribes Office of Environmental Protection at least 30 days before construction starts for review and approval. Any modifications to the



SWPPP should be submitted to the Fort Peck Tribes Office of Environmental Protection.

- iii. Any Decision-maker that is required under Part 8.0 of the CGP to submit a weekly, bi-weekly, and/or annual report to EPA, must submit an electronic copy of the annual report to the Fort Peck Tribes Office of Environmental Protection within three business days after submittal to EPA.

## 9.9 EPA REGION 9

### 9.9.1 CAR10I000 Indian country within the State of California

#### a. Morongo Band of Mission Indians

- i. A copy of the Stormwater Pollution Prevention Plan (SWPPP) must be submitted (either mailed or electronically) to the MEPD no less than thirty (30) days before commencing construction activities:  
 Morongo Band of Mission Indians  
 Environmental Protection Department  
 12700 Pumarra Road  
 Banning, CA 92220  
 Email: epd@morongo-nsn.gov
- ii. Copies of the Notice of Intent (NOI) and the Notice of Termination (NOT) must be sent to the MEPD at the same time they are submitted to EPA.
- iii. Operators of an "emergency-related project" must submit notice to the MEPD within twenty- four (24) hours after commencing construction activities.
- iv. Spills, leaks, or unpermitted discharges must be reported to the MEPD within twenty-four (24) hours of the incident, in addition to the reporting requirements of the CGP.
- v. Projects utilizing cationic treatment chemicals (as defined in Appendix A of the CGP) within the Morongo Reservation are not eligible for coverage under this certification of the CGP.
- vi. Facilities covered under the CGP will be subject to compliance inspections by MEPD staff, including compliance with final site stabilization criteria prior to submitting an NOI **[EPA assumes this intended to refer to an NOT]**.

### 9.9.2 GUR100000 Island of Guam

- a. For purposes of this Order, the term "Project Proponent" shall mean U.S. Environmental Protection Agency, and its agents, assignees, and contractors.
- b. For purposes of this Order, the permit "Operator" shall mean any party associated with a construction project that meets either of the following two criteria:
  - i. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g. in most cases this is the owner of the site); or
  - ii. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor of the project).

Subcontractors generally are not considered operators for the purposes of this permit.

- c. The Project Proponent shall enforce the proposed 2022 CGP and ensure that the Operator complies with the conditions of the permit at all times.<sup>107</sup> (40 CFR §121.11(c))
- d. All submittals required by this Order shall be sent to the Guam Environmental Protection Agency Attn: 401 Federal Permit Manager, Non-Point Source Program, EMAS Division, 3304 Mariner Avenue, Bldg. 17-3304, Barrigada, Guam 96913, AND via email to jesse.cruz@epa.guam.gov. The submittals shall be identified with WQC Order #2021- 04 and include the COP Permit Number, certifying representative's name, title, mailing address and phone number. (§51060)(4) 2017 GWQS)
- e. A copy of the Operator's signed Stormwater Pollution Prevention Plan (SWPPP) and signed Notice of Intent (NOI) and Notice of Termination (NOT) submitted to EPA for review and approval, shall concurrently be submitted to Guam EPA, consistent with condition A4. Coordination with Guam EPA is encouraged when the receiving water(s) for the proposed discharge is/are being identified. (§10105.B.5.d.) GSESCR; (§51060)(4) 2017 GWQS)
- f. The Operator must comply with the conditions and requirements set forth in 22 GAR 10, Guam Soil Erosion and Sediment Control Regulations (GSESCR).
- g. Before submitting the NOT to EPA, Operators shall comply with GSESCR regulations at §10105.B10. (Stabilization of Affected Areas) and §10107.B. (Final Inspection and Approval)
- h. All operators/owners shall comply with the general design criteria for best management practices (BMPs) acceptable for meeting the Construction and Post-construction stormwater criteria in the 2006 CNMI and Guam Stormwater Management Manual. (E.O. 2012-02)
- i. Operating reports and monitoring and analytical data (e.g. Discharge Monitoring Reports (DMRs), follow-up monitoring reports, Exceedance Reports for Numerical Effluent Limits, etc.) submitted to EPA shall be concurrently submitted to Guam EPA, consistent with condition A4. §51060)(4) 2017 GWQS
- j. The Operators who install a sediment basin or similar impoundment shall maintain the storage capacity of five thousand cubic feet {5,000 cu. ft.) per acre of project area tributary to the basin. (§10105.B.5.i.) GSESCR
- k. (1) This Order does not authorize EPA to qualify Rainfall Erosivity Waivers to stormwater discharges associated with small construction activities (i.e. 1-5 acres). Operators are required to apply for an NOI for those projects eligible for coverage under the proposed 2022 CGP. An Erosion and Sediment Control Plan is required for every site that would be covered by the proposed 2022 CGP. (22 GAR §10104) The average annual rainfall for Guam and the CNMI exceeds 100 inches per year in many locations. These climatic conditions combined with the region's unique limestone, volcanic geologic formations, sensitive water resources and significant land

<sup>107</sup> By incorporating this condition into the permit, EPA acknowledges receipt of Guam's certification conditions.

development forces make stormwater discharges a very significant environmental and economic issue. (2006 CNMJ/Guam Stormwater Management Manual) E.O. 2012-02

(2) This Order does not authorize EPA to approve a Sediment TMDL Waiver for the Ugum River. Operators of construction activities eligible for a TMDL Waiver in lieu of coverage under the proposed 2022 CGP, shall submit a complete and accurate waiver certification as described in C.2., Appendix C - (Small Construction Waivers) to Guam EPA per condition A4., prior to notifying EPA of its intention to obtain a waiver. §51060)(4) 2017 GWQS

- l.** The Project Proponent shall submit to Guam EPA a signed Statement of Understanding of Water Quality Certification Conditions.<sup>108</sup> (see Attachment A for an example) per condition A4. §51060)(4) 2017 GWQS
- m.** The Operator shall comply with applicable provisions of the Guam Pesticides Act of 2007 (10 GCA Chapter 50) and implementing regulations at Title 22 GAR Chapter 15 for any use and application of pesticides.
- n.** Point source discharge(s) to waterbodies under the jurisdiction of Guam EPA must be consistent with the antidegradation policy in 22 GAR §510I(b).
- o.** The operator shall carry out construction activities in such a manner that will not violate Guam Water Quality Standards (GWQS). Proposed 2022 CGP discharges are prohibited as follows:
  - i.** In Marine Waters, Category M-1 Excellent 22 GAR Chapter 5 §5102(b)(I); and
  - ii.** In Surface Waters, Category S-1 High 22 GAR Chapter 5 §5102(c)(I)
- p.** In addition to complying with construction dewatering requirements in Part 2.4 and site inspection requirements for all areas where construction dewatering is taking place in Part 4 of the proposed 2022 CGP, Operators shall comply with all dewatering conditions and requirements set forth in 22 GAR 7, Water Resources Development and Operating Regulations, to include securing Guam EPA permits prior to any dewatering activities.
- q.** The Operator shall develop and implement a Spill Prevention and Containment Plan.
- r.** The Operator shall have adequate and appropriate spill response materials on hand to respond to emergency release of oil, petroleum or any other material into waters of the territory.
- s.** Any unpermitted discharge into territorial waters or onto land with a potential for entry into territorial waters, is prohibited. If this occurs, the Operator shall immediately take the following actions:
  - i.** Cease operations at the location of the violation or spill.
  - ii.** Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - iii.** Notify Guam EPA of the failure to comply. All petroleum spills shall be reported immediately to:

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<sup>108</sup> By incorporating this condition into the permit, EPA acknowledges receipt of Guam's certification conditions.

- (a) Guam's Emergency 911 system
  - (b) Guam EPA's 24-Hour Spill Response Team at (671) 888-6488 or during working hours (671) 300-4751
  - (c) US Coast Guard Sector Guam (671) 355-4824
  - (d) National Response Center 1-800-424-8802
- iv.** Submit a detailed written report to Guam EPA within five days of noncompliance that describes the nature of the event corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- f.** Compliance with this condition does not relieve the Operator from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
- u.** Submittal or reporting of any of this information does not provide relief from any subsequent enforcement actions for unpermitted discharges to waters of the United States.
- v.** This Order is valid for five (5) Years from Date of Certification, unless otherwise approved by the Guam EPA Administrator.
- w.** The Operator shall be required to adhere to the current Guam Coral Spawning Moratorium dates for both hard and soft corals where in-water activities and/or construction activity in close proximity with marine waters may impair water quality. These dates can be obtained from the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, or the NOAA NMFS Pacific Islands Regional Office Habitat Conservation Division.
- x.** The Operator shall provide notice to Guam EPA consistent with Condition A4:
- (a) Immediately upon discovery of noncompliance with the provisions of this Order.
- y.** A Notice of Violation/Work Stop Order will be issued if certification conditions are not adhered to or when significant or sustained water quality degradation occurs. Work or discharge shall be suspended or halted until the Operator addresses environmental problems/concerns to Guam EPA's satisfaction. Guam EPA may also levy penalties and fines (10 GCA §47111). Invalidity or enforceability of one or more provisions of this certification shall not affect any other provision of this certification.

## **9.10 EPA REGION 10**

### **9.10.1 IDR10I000 Indian country within the State of Idaho, except Duck Valley Reservation lands (see Region 9)**

#### **a. Shoshone-Bannock Tribes**

- i.** Copies of the following information must be sent to the SBT-WRD:
  - (a) Notice of Intent (NOI)

The Notice of Intent shall be forwarded to the SBT-WRD within thirty (30) days of receipt of submitting NOI to the USEPA.

Shoshone-Bannock Tribes Water Resources Department  
 PO Box 306 Pima Drive  
 Fort Hall, ID 83203 Phone: (208) 239-4582  
 Fax: (208) 239-4592  
 Or Email ctanaka@sbtribes.com

- b. If requested by the SBT-WRD, the permittee must submit a copy of the SWPPP to SBT-WRD within fourteen (14) days of the request.

**9.10.2 ORR10I000 Indian country within the State of Oregon, except Fort McDermitt Reservation lands (see Region 9)**

**a. Confederated Tribes of Coos, Lower Umpqua, and Siuslaw**

- i. No activities allowed under the CGP shall result in the degradation of any Tribal waters or affect resident aquatic communities or resident or migratory wildlife species at any life stage.
- ii. The operator shall be responsible for achieving compliance with CTCLUSI Water Quality Standards and all other tribal codes, regulations, and laws as they exist at the time that the permit is submitted.
- iii. The operator shall submit a copy of the Notice of Intent (NOI) to be covered by the general permit to the CTCLUSI Water Quality Program before, or at the same time as, it is submitted to EPA.
- iv. The operator shall be responsible for submitting all Stormwater Pollution Prevention Plans (SWPPP) required under this general permit to the CTCLUSI Water Quality Program for review and determination that the SWPPP is sufficient to meet Tribal Water Quality Standards, prior to the beginning of any discharge activities taking place.
- v. The operator shall be responsible for reporting an exceedance to Tribal Water Quality Standards to the CTCLUSI Water Quality Program at the same time it is reported to EPA.
- vi. The THPO will be provided 30 days to comment on the APE as defined in the permit application.
- vii. If the project is an undertaking, a cultural resource assessment must occur. All fieldwork must be permitted by the THPO (as appropriate), conducted by qualified personnel (as outlined by the Secretary of Interior's Standards and Guidelines; [http://www.nps.gov/history/local-law/arch\\_stnds\\_O.htm](http://www.nps.gov/history/local-law/arch_stnds_O.htm)) and documented according to Oregon Reporting Standards (Reporting\_Guidelines.pdf) ([oregon.gov](http://oregon.gov)). The resulting report must be submitted to the THPO and the THPO must concur with the finding of effect and recommendations before any ground disturbing work can occur. The THPO requires 30 days to review all reports.
- viii. The operator must obtain THPO concurrence in writing. If historic properties are present, this written concurrence will outline measures to be taken to prevent or mitigate adverse effects to historic properties.

**b. Confederated Tribes of the Umatilla Indian Reservation**

- i. The operator shall be responsible for achieving compliance with the

Confederated Tribes of the Umatilla Indian Reservation's (CTUIR) Water Quality Standards.

- ii. The operator shall submit a copy of the Notice of Intent (NOI) to be covered by the general permit to the CTUIR Water Resources Program at the address below, at the same time it is submitted to EPA.
- iii. The operator shall be responsible for submitting all Stormwater Pollution Prevention Plans (SWPPP) required under this general permit to the CTUIR Water Resources Program for review and determination that the SWPPP is sufficient to meet Tribal Water Quality Standards, prior to the beginning of any discharge activities taking place.
- iv. The operator shall be responsible for reporting an exceedance to Tribal Water Quality Standards to the CTUIR Water Resources Program at the same time it is reported to EPA.

Confederated Tribes of the Umatilla Indian Reservation  
Water Resources Program  
46411 Timíne Way  
Pendleton, OR 97801  
(541) 429-7200

- v. The THPO will be provided 30 days to comment on the APE as defined in the permit application.
- vi. If the project is an undertaking, a cultural resource assessment must occur. All fieldwork must be permitted by the Tribal Historic Preservation Office (as appropriate), conducted by qualified personnel (as outlined by the Secretary of Interior's Standards and Guidelines; [http://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](http://www.nps.gov/history/local-law/arch_stnds_0.htm)) and documented according to Oregon Reporting Standards (Reporting\_Guidelines.pdf (oregon.gov)). The resulting report must be submitted to the THPO and the THPO must concur with the finding of effect and recommendations before any ground disturbing work can occur. The THPO requires 30 days to review all reports.
- vii. The operator must obtain THPO concurrence in writing. If historic properties are present, this written concurrence will outline measures to be taken to prevent or mitigate adverse effects to historic properties.

**9.10.3 WAR10F000 Areas in the State of Washington, except those located on Indian country, subject to construction activity by a Federal Operator**

- a. For purposes of this Order, the term "Project Proponent" shall mean those that are seeking coverage under this permit, and its agents, assignees and contractors.
- b. The Federal Agency shall mean the US Environmental Protection Agency. The Federal Agency shall enforce the permit and ensure that the Project Proponent complies with the conditions of the permits at all times.
- c. Failure of any person or entity to comply with this Certification may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Certification.
- d. The Certification conditions within this Order must be incorporated into EPA's final NPDES permit. Per 40 CFR 121.10(a), all certification conditions herein that satisfy the

requirements of 40 CFR 121.7(d) must be incorporated into the permit. Per 40 CFR 121.10(b), the permit must clearly identify all certification conditions.

- e. This Certification does not authorize exceedances of water quality standards established in chapter 173-201A WAC.
- f. Discharges from construction activity must not cause or contribute to violations of the Water Quality Standards for Surface Water of the State of Washington (chapter 173-201A WAC), Ground Water Quality Standards (chapter 173-200 WAC), Sediment Management Standards (chapter 173-204 WAC), and standards in the EPA's Revision of certain Federal water quality criteria applicable to Washington (40 CFR 131.45). Discharges that do not comply with these standards are prohibited.
- g. Prior to discharge of stormwater and non-stormwater to waters of the State, the Permittee must apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). This includes the preparation and implementation of an adequate Stormwater Pollution Prevention Plan (SWPPP), with all appropriate Best Management Practices (BMPs) installed and maintained in accordance with the SWPPP and the terms and conditions of the permit.
  - i. BMPs must be consistent with:
    - (a) The Stormwater Management Manual for Western Washington (most current approved edition at the time this permit was issued), for sites west of the crest of the Cascade Mountains; or
    - (b) The Stormwater Management Manual for Eastern Washington (most current approved edition at the time this permit was issued), for sites east of the crest of the Cascade Mountains; or
    - (c) Revisions to either manual, or other stormwater management guidance documents or manuals which provide equivalent level of pollution prevention, that are approved by Ecology and incorporated into this permit in accordance with the permit modification requirements of WAC 173-226-230. (For purposes of this section, the stormwater manuals listed in Appendix 10 of the Phase I Municipal Stormwater Permit are approved by Ecology); or
    - (d) Documentation in the SWPPP that the BMPs selected provided an equivalent level of pollution prevention, compared to the applicable stormwater management manuals, including:
      - The technical basis for the selection of all stormwater BMPs (scientific, technical studies, and/or modeling) that support the performance claims for the BMPs being selected.
      - An assessment of how the selected BMP will satisfy AKART requirements and the applicable federal technology-based treatment requirements under 40 CFR part 125.3.

The Stormwater Management Manuals for Eastern and Western Washington can be found at: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals>.

- ii. An adequate SWPPP must include a narrative and drawings. All BMPs must be clearly referenced in the narrative and marked on the drawings. The SWPPP

narrative must include documentation to explain and justify the pollution prevention decisions made for the project. Documentation must include:

- (a) Information about existing site conditions (topography, drainage, soils, vegetation, etc.).
- (b) Potential erosion problem areas.
- (c) The 13 elements of a SWPPP, including BMPs used to address each element. Unless site conditions render the element unnecessary and the exemption is clearly justified in the SWPPP, the 13 elements are as follows:
  - Preserve Vegetation/Mark Clearing Limits
  - Establish Construction Access
  - Control Flow Rates
  - Install Sediment Controls
  - Stabilize Soils
  - Protect Slopes
  - Protect Drain Inlets
  - Stabilize Channels and Outlets
  - Control Pollutants
  - Control Dewatering
  - Maintain BMPs
  - Manage the Project
  - Protect Low Impact Development (LID) BMPs

- h. Discharges of stormwater and authorized non-stormwater must be monitored for turbidity (or transparency) and, in the event of significant concrete work or engineered soils, pH must also be monitored. As applicable based on project specifics, monitoring, benchmarks, and reporting requirements contained in Condition S.4. (pp.10-16) of the Washington State Construction Stormwater General Permit, effective January 1, 2021, shall apply.
- i. Discharges to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, phosphorus, or pH must comply with the following numeric effluent limits:

Parameter identified in 303(d) listing	Parameter Sampled	Unit	Analytical Method	Numeric Effluent Limit
<ul style="list-style-type: none"> <li>• Turbidity</li> <li>• Fine Sediment</li> <li>• Phosphorus</li> </ul>	Turbidity	NTU	SM2130	25 NTUs at the point where the stormwater is discharged from the site.
High pH	pH	su	pH meter	In the range of 6.5 – 8.5

All references and requirements associated with Section 303(d) of the Clean Water Act mean the most current EPA-approved listing of impaired waters that exists on the



effective date of the permit, or the date when the operator's complete permit application is received by EPA, whichever is later.

The EPA approved WQ Assessment can be found at: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d>

- j.** Discharges to a waterbody that is subject to a Total Maximum Daily Load (TMDL) for turbidity, fine sediment, high pH, or phosphorus must be consistent with the TMDL.
  - i.** Where an applicable TMDL sets specific waste load allocations or requirements for discharges covered by this permit, discharges shall be consistent with any specific waste load allocations or requirements established by the applicable TMDL.
  - ii.** Where an applicable TMDL has established a general waste load allocation for construction stormwater discharges, but no specific requirements have been identified, compliance with this permit will be assumed to be consistent with the approved TMDL.
  - iii.** Where an applicable TMDL has not specified a waste load allocation for construction stormwater discharges, but has not excluded these discharges, compliance with this permit will be assumed to be consistent with the approved TMDL.
  - iv.** Where an applicable TMDL specifically precludes or prohibits discharges from construction activity, the operator is not eligible for coverage under this permit.

Applicable TMDL means a TMDL for turbidity, fine sediment, high pH, or phosphorus which has been completed and approved by EPA as of the effective date of the permit, or prior to the date of the operator's complete application for permit coverage is received by EPA, whichever is later.

- k.** Discharges to waters of the state from the following activities are prohibited:
  - i.** Concrete wastewater.
  - ii.** Wastewater from washout and clean-up of stucco, paint, form release oils, curing compounds and other construction materials.
  - iii.** Process wastewater as defined by 40 Code of Federal Regulations (CFR) 122.2.
  - iv.** Slurry materials and waste from shaft drilling, including process wastewater from shaft drilling for construction of building, road, and bridge foundations unless managed to prevent discharge to surface water.
  - v.** Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
  - vi.** Soaps or solvents used in vehicle and equipment washing.
  - vii.** Wheel wash wastewater, unless managed to prevent discharge to surface water.
  - viii.** Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed according to appropriate controls described within the permit.
- l.** This Certification is valid until the expiration date including any administrative extension or termination date of the NPDES 2022 Construction General Permit. (40 CFR § 122.46)

- m.** The Federal Agency shall enforce and the Project Proponent must comply with all the reporting and notification conditions of the NPDES 2022 Construction General Permit in order to comply with this Order and the certification conditions herein (40 CFR § 121.11).
- n.** You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person (see addresses below). E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

#### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p><b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p><b>Pollution Control Hearings Board</b> 1111 Israel RD SW STE 301 Tumwater, WA 98501</p>	<p><b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p><b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903</p>

#### CONTACT INFORMATION

Please direct all questions about this Order to:

Noel Tamboer  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
(360) 701-6171  
[noel.tamboer@ecy.wa.gov](mailto:noel.tamboer@ecy.wa.gov)

#### 9.10.4 WAR10I000 Indian country within the State of Washington

##### a. Lummi Nation

- i. This certification does not exempt and is provisional upon compliance with other applicable statutes and codes administered by federal and Lummi tribal agencies. Pursuant to Lummi Code of Laws (LCL) 17.05.020(a), the operator must also obtain a land use permit from the Lummi Planning Department as provided in Title 15 of the Lummi Code of Laws and regulations adopted thereunder.
- ii. Pursuant to LCL 17.05.020(a), each operator shall develop and submit a Storm Water Pollution Prevention Plan to the Lummi Water Resources Division for review and approval by the Water Resources Manager prior to beginning any discharge activities.
- iii. Pursuant to LCL Title 17, each operator shall be responsible for achieving compliance with the Water Quality Standards for Surface Waters of the Lummi
- iv. Indian Reservation (Lummi Administrative Regulations [LAR] 17 LAR 07.010 through 17 LAR 07.210 together with supplements and amendments thereto).
- v. Each operator shall submit a signed copy of the Notice of Intent (NOI) to the Lummi Water Resources Division at the same time it is submitted electronically to the Environmental Protection Agency (EPA) and shall provide the Lummi Water Resources Division the acknowledgement of receipt of the NOI from the EPA and the associated NPDES tracking number provided by the EPA within 7 calendar days of receipt from the EPA.
- vi. Each operator shall submit a signed copy of the Notice of Termination (NOT) to the Lummi Water Resources Division at the same time it is submitted electronically to the EPA and shall provide the Lummi Water Resources Division the EPA acknowledgement of receipt of the NOT.
- vii. Storm Water Pollution Prevention Plans, Notice of Intent, Notice of Termination and associated correspondence with the EPA shall be submitted to:  
Lummi Natural Resources Department  
ATTN: Water Resources Manager 2665 Kwina Road  
Bellingham, WA 98226-9298

**b. Port Gamble S'Klallam Tribe**

- i. No discharge from the project site shall cause exceedances of Port Gamble S'Klallam Surface Water Quality Standards narrative or numeric criteria in Tribal waters. This includes activities outside of Tribal lands that occur upstream of Tribal waters.
  - (a) If any exceedance of these water quality standards occurred, the Natural Resources Department shall be notified immediately.
    - The Department shall additionally be provided a complete draft of the proposed corrective action within a reasonable timeframe and its approval will be required before any corrective action may be taken.
- ii. Operators performing activities under the CGP that may affect Tribal waters will require a permit and shall submit their plans to the Port Gamble S'Klallam Natural Resources Department for review.
  - The Department has the right to require conditions outside of this Water Quality Certification prior to permit approval.

- iii. No activities allowed under the CGP shall result in the degradation of any Tribal waters or change in designated uses.
- iv. No activities allowed under the CGP shall affect resident aquatic communities or resident/migratory wildlife species at any life stage.
  - Biological assessment methods used to determine the effect of an activity allowed under the CGP shall be approved by the PGST Natural Resources Department.
- v. No activities allowed under the CGP shall be conducted within wetland and stream buffer zones, nor shall said activities affect in any way wetland or stream buffers, as defined by *PGST Law and Order Code 24.08.01(c)*.
- vi. Concentrations for substances listed within the table in *Water Quality Standards for Surface Waters* sec. 7(7) shall not be exceeded by activities allowed under the CGP.

**c. Spokane Tribe of Indians**

- i. Pursuant to Tribal Law and Order Code (TLOC) Chapter 30 each operator shall be responsible for achieving compliance with the Surface Water Quality Standards of the Spokane Tribe. The operator shall notify the Spokane Tribe, Water Control Board (WCB) of any spills of hazardous material and;
  - ii. Each operator shall submit a signed hard copy of the Notice of Intent (NOI) to the WCB at the same time it is submitted to EPA.
  - iii. The permittee shall allow the Tribal Water Control Board or its designee to inspect and sample at the construction site as needed.
  - iv. Each operator shall submit a signed copy of the Notice of Termination (NOT) to the WCB at the same time it is submitted to EPA
- The correspondence address for the Spokane Tribe Water Control Board is:

Water Control Board c/o Brian Crossley PO Box 480  
 Wellpinit WA 99040  
 (509) 626-4409  
 crossley@spokanetribe.com

**d. Swinomish Tribe**

- i. Owners and operators seeking coverage under this permit must submit a copy of the Notice of Intent (NOI) to the DEP at the same time the NOI is submitted to EPA.
- ii. Owners and operators must also submit to the DEP changes in NOI and/or Notices of Termination at the same time they are submitted to EPA.
- iii. Owners and operators seeking coverage under this permit must also submit a Stormwater Pollution Prevention Plan to the DEP for review and approval by DEP prior to beginning any discharge activities.

**e. Tulalip Tribes**

- i. Submission of NOI: Copies of the Notice of Intent (NOI), Certification shall be submitted to the Tribe's Natural Resources Department to notify the Tribes of the

pending project and in order for the Tribes to review the projects potential impacts to endangered or threatened species.

- ii. Submission of SWPPP: A copy of the Stormwater Pollution Plans (SWPPPs) shall be submitted to the Tribe's Natural Resources Department along with the NOI during the 30 day waiting period.
- iii. Submission of Monitoring Data and Reports: The results of any monitoring required by this permit and reports must be sent to the Tribe's Natural Resources Department,
- iv. The Tulalip Tribes are federally recognized successors in the interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.
- v. including a description of the corrective actions required and undertaken to meet effluent limits or benchmarks (as applicable).
- vi. Authorization to Inspect: The Tribe's Natural Resources Department may conduct an inspection of any facility covered by this permit to ensure compliance with tribal water quality standards. The Department may enforce its certification conditions.
- vii. Submission of Inspection Reports: Inspection reports must be sent to the Tribe's Natural Resources Department, including a description of the corrective actions required and undertaken to meet effluent limits or benchmarks (as applicable).
- viii. Permits on-site: A copy of the permit shall be kept on the job site and readily available for reference by the construction supervisor, construction managers and foreman, and Tribal inspectors.
- ix. Project Management: The applicant shall ensure that project managers, construction managers and foreman, and other responsible parties have read and understand conditions of the permit, this certification, and other relevant documents, to avoid violations or noncompliance with this certification.
- x. Emergency Spill Notification Requirements: In the event of a spill or the contractor shall immediately take action to stop the violation and correct the problem, and immediately report spill to the Tulalip Tribes Police Department (425) 508-1565. Compliance with this condition does not relieve the applicant from responsibility to maintain continuous compliance with the terms and conditions of this certification or the resulting liability from failure to comply.
- xi. Discharges to CERCLA Sites: This permit does not authorize direct stormwater discharges to certain sites undergoing remedial cleanup actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless first approved by the appropriate EPA Regional office. In the case of the Tulalip Landfill site (WAD980639256), the Tulalip Tribes also requests notification by the facility and consultation with EPA prior to discharge. Contaminants at this site may include but are not limited to: dioxins, furans, arsenic, copper, lead, zinc, 4- methyl-phenol, Hex-CB, HPAHs, PCBs, PCE, cadmium, mercury, and LPAHs.
- xii. Discharge-related Activities that have Potential to Cause an Adverse Effect on Historic Properties: Installation of stormwater controls that involve subsurface disturbances may potentially have an adverse impact on historic properties.

- xiii.** Procedures detailed in the permit shall be completed. Richard Young, of the Tulalip Tribe's Cultural Resources Department shall be contacted prior to initiating discharge-related activities that may have an impact on historic properties. His contact information is (360) 716-2652, ryoung@tulaliptribes-nsn.gov.
- xiv.** Invalidation: This certification will cease to be valid if the project is constructed and/or operated in a manner not consistent with the project description contained in
- xv.** the permit. This certification will also cease to be valid and the applicant must reapply with an updated application if information contained in the permit is voided by subsequent submittals.
- xvi.** Modification: Nothing in this certification waives the Tulalip Tribes of Washington's authority to issue modifications to this certification if additional impacts due to operational changes are identified, or if additional conditions are necessary to protect water quality or further protect the Tribal Communities interest.
- xvii.** incorporation by reference: This certification does not exempt the applicant from compliance with other statutes and codes administered by the Tribes, county, state and federal agencies.
- xviii.** Compliance with Tribe's 1996 Water Quality Standards: Each permittee shall be responsible for controlling discharges and achieving compliance with the Tribe's Water Quality Standards.
- xix.** Compliant with Tulalip Tribes Tidelands Management Policy: Permittee shall be responsible for achieving compliance with applicable sections of the Tulalip Tribe's Tidelands Management Policy. (Tulalip Tribal Code Title 8 Chapter 8.30).
- xx.** Compliant with Tulalip Tribes Environmental Infractions: Permittee shall be responsible for achieving compliance with applicable sections of the Tulalip Tribe's Environmental Infractions. (Tulalip Tribal Code Title 8 Chapter 8.20).
- xxi.** Where to Submit information and for further Coordination: All requested documents should be sent to the: Tulalip Tribes Natural Resources Environmental Department c/o Kurt Nelson and Valerie Streeter, 6704 Marine Drive, Tulalip, Washington 98271. For further 401 Certification coordination with the Tulalip Tribes Natural Resources Department, please contact Mr. Kurt Nelson (360) 716-4617 knelson@tulaliptribes-nsn.gov. 6406 Marine Dr., Tulalip WA 98271.

**f. Makah Tribe**

- i.** The permittee shall be responsible for meeting any additional permit requirements imposed by EPA necessary to comply with the Makah Tribe's Water Quality Standards if the discharge point is located within the Makah's U&A treaty reserved areas.
- ii.** Each permittee shall submit a copy of the Notice of Intent (NOI) to be covered by the general permit to Makah Fisheries Management, Water Quality Department at the address listed below at the same time it is submitted to the EPA.  
Makah Water Quality  
Makah Fisheries Management (MFM)  
ray.colby@makah.com

PO Box 115  
Neah bay, WA 98357

- iii. All supporting documentation and certifications in the NOI related to coverage under the general permit for Endangered Species Act purposes shall be submitted to the Tribe's Habitat programs for their review.
  - iv. If EPA requires coverage under an individual or alternative permit, the permittee shall submit a copy of the permit to Assistant Fisheries Director, ray.colby@makah.com.
  - v. The permittee shall submit all Stormwater Pollution Prevention plan (SWPP) to MFM for review and approval prior to beginning any activities resulting in a discharge to Makah tribal waters.
  - vi. The permittee shall notify Ray Colby, ray.colby@makah.com (360) 645-3150 prior to conducting inspections at construction sites generating stormwater discharges to tribal waters.
  - vii. The operator shall treat dewatering discharges with controls necessary to minimize discharges of pollutants to surface waters, or ground waters, and from stormwater runoff onsite from excavations, trenches, foundations, or storage areas. To the extent feasible, at all points where dewatering is discharged, comply with the velocity dissipation using check dams, sediment traps, and grouted outlets.
- g. Puyallup Tribe of Indians**
- i. The permittee shall be responsible for meeting any additional permit requirements imposed by EPA necessary to comply with the Puyallup Tribe's antidegradation procedures.
  - ii. Each permittee shall submit a copy of the Notice of Intent (NOI) to be covered by the general permit to Char Naylor, Tribal Water Quality Manager at the following e-mail address: ([char.naylor@puyalluptribe-nsn.gov](mailto:char.naylor@puyalluptribe-nsn.gov)) at the same time it is submitted to EPA.
  - iii. All supporting documentation and certifications in the NOI related to coverage under the general permit for Endangered Species Act purposes shall be submitted to Char Naylor, Tribal Water Quality Manager/Assistant Fisheries Director ([char.naylor@puyalluptribe-nsn.gov](mailto:char.naylor@puyalluptribe-nsn.gov)) for review.
  - iv. If EPA requires coverage under an individual or alternative permit, the permittee shall submit a copy of the permit to Char Naylor at the email address listed above.
  - v. The permittee shall submit all stormwater pollution prevention plans to Char Naylor for review and approval prior to beginning any activities resulting in a discharge to Puyallup tribal waters.
  - vi. The permittee shall contact Brandon Reynon ([Brandon.reynon@puyalluptribe-nsn.gov](mailto:Brandon.reynon@puyalluptribe-nsn.gov)), Tribe's Historic Preservation Officer or Jennifer Keating ([Jennifer.keating@puyalluptribe-nsn.gov](mailto:Jennifer.keating@puyalluptribe-nsn.gov)), Tribe's Assistant Historic Preservation Officer regarding historic properties and cultural resources.
  - vii. To minimize the discharge of pollutants to groundwater or surface waters from stormwater that is removed from excavations, trenches, foundations, vaults, or

other storage areas, treat dewatering discharges with controls necessary to minimize discharges of pollutants. Examples of appropriate controls include sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, and filtration systems (e.g., bag or sand filters) that are designed to remove sediment.

To the extent feasible, utilize vegetated, upland areas of the site to infiltrate dewatering water before discharge. At all points where dewatering water is discharged, utilize velocity dissipation controls. Examples of velocity dissipation devices include check dams, sediment traps, riprap, and grouted riprap at outlets.

- viii.** The permittee shall provide and maintain natural buffers to the maximum extent possible (and/or equivalent erosion and sediment controls) when tribal waters are located within 100 feet of the boundaries. If infeasible to provide and maintain an undisturbed 100 foot natural buffer, erosion and sediment controls to achieve the sediment load reduction equivalent to a 100-foot undisturbed natural buffer shall be required.



## **FIRE PROTECTION AND SUPPRESSION PLAN**

## **FIRE PROTECTION AND SUPPRESSION PLAN**

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 in and adjacent to the project construction limits and work areas, and all roads and ancillary sites used in connection with the work.

### **1. Contractor Fire Suppression Responsibilities**

- a. It is understood and agreed that the Contractor will do everything in their power to prevent and suppress fire on or adjacent to the Project Area, as stipulated in the contract.
- b. The Contractor will be responsible for and will direct all fire activities on the project until relieved by a designated Fire Official and will ensure 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 the primary fire protection and suppression contact is not at the project site.
- c. 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.
- d. The Contractor will comply with the following Fire Plan for the duration of the contract.

### **2. Fire Plan**

Before starting any operations on the Project, the Contractor, shall prepare a Project specific fire plan in cooperation with the Contracting Officer (CO) providing for the prevention and control of fires in the project area.

The Contractor shall certify compliance with the fire protection and suppression requirements before beginning operations, and shall update such certification when/if operations change.

### **3. Substitute Measures**

The CO 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 Fire Official will be employed in accordance with the Interagency Pay Plan for Emergency Firefighters. The Fire Official 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 Forest 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

The Contractor shall not allow open fires on the project area without advance permission in writing from the 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, 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 "O" 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 "O" 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 the 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 project area. When sent to the Contractor, the revised Industrial Fire Precaution Levels will supersede the attached levels.

## 8. Fire Tools

The Contractor shall furnish serviceable firefighting 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 "O" 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 firefighting equipment specified in the contract, excluding helicopters, and of directing the activities of the Contractor's personnel on forest 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 firefighting 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. "O" 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 the CO 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 the CO, which may specify conditions under which such explosives may be used and precautions to be taken.

#### 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 the CO and/or Fire Official 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.

INDUSTRIAL FIRE PRECAUTIONS SCHEDULE  
LEVEL INDUSTRIAL FIRE PRECAUTION (IFPL)

Identification of IFPL Levels:

The Contractor shall obtain the predicted Industrial Fire Precaution Level daily, prior to the start of work. If predictions made after 6:00 p.m., local time, are significantly different than the original prediction, the CO and/or Fire Official will inform the Contractor when changes in restrictions or industrial precautions are made.

Where hauling involves transit through more than one shutdown/regulated use area, the precaution level at the loading site shall govern the level of haul restriction, unless otherwise prohibited by other than industrial precaution level system.

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.

Definitions: 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/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 CO and/or Fire Official determines the combination of elements reduces the probability of fire starting and/or spreading.

Waivers:

Waivers, provided by the CO prior to beginning the activity, may be issued for activities including but 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 Contractor shall assure that all conditions of such waivers or substitute precautions are met.