



**WYOMING PATHWAYS
PO BOX 725
LANDER, WYOMING 82520**

REQUEST FOR PROPOSALS

**PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL
PHASES 2A AND 2B**

Non-Motorized, Natural-Surface Trail Project near Laramie, Wyoming

**PRE-BID MEETING: REQUIRED WALK-THROUGH
APRIL 26, 2024 10:30AM, TIE CITY PARKING LOT**

OPENING DATE AND TIME: MAY 10, 2024 ----- 05:00 PM

PROJECT MANAGER: MICHAEL KUSIEK, TELEPHONE: (307) 760-9035

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WYOMING PATHWAYS
PO Box 725
LANDER, WY 82520

CALL FOR BIDS:

1. Sealed bids One signed copy, by mail or electronic delivery, for *PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B* trail construction project in County, Wyoming, will be received and time date stamped in the Wyoming Pathways Office, PO Box 725, Lander, Wyoming, 82520, or email (michael@wyopath.org) until 5:00 p.m. May 10, 2024, at which time they will be publicly opened and read. Unit pricing will not be disclosed at the bid opening.
2. Bids must be received in the WYOMING PATHWAYS Office by the time and date specified.
3. No bid will be considered which is not submitted on the attached "BID FORM", signed by a proper official of the company bidding, in the space provided therefore. Bids submitted by US Mail, or signed PDF emailed bids will be accepted.
4. No bid will be considered which modifies in any manner any of the general provisions, specifications or the bid form.
5. In case of an error in the extension of prices in the bid the unit prices will govern.
6. A bid that is in the possession of WYOMING PATHWAYS may be altered by a letter bearing the signature and name of the person authorized for bidding provided it is received prior to the time and date of the bid opening; this will only be accepted by mail or email. It is the bidder's responsibility to confirm receipt of this alteration by WYOMING PATHWAYS.
7. A bid that is in the possession of WYOMING PATHWAYS may be withdrawn by the bidder up to the time and date of the bid opening. Bids may not be withdrawn for a period of 30 days after the bid opening.
8. The work contemplated will be covered by a SERVICE CONTRACT, and a formal contract will be issued to the successful Contractor after the bid process is complete.
9. Acceptance of the SERVICE CONTRACT will be deemed to mean acceptance of the contract work as specified in the Bid.
10. Final payment of ten percent (10%) of the total contract amount will be made the Forty-first (41) day after the first Notice of Completion and Acceptance of all work under the contract has been advertised in a newspaper nearest the point where the work took place.
11. In the event that all of the work is not completed by October 31, 2024, WYOMING

PATHWAYS may assess *Fifty Dollars (\$50.00)*, per calendar day, not as a penalty, but as liquidated damages to WYOMING PATHWAYS.

12. If assessed, the liquidated damages assessment for non-completion by the time specified will be computed beginning the day following the first working day specified for completion and continue each and every calendar day until all items shown on the bid are completed. If it is necessary to apply this assessment, the total amount of such damages will be deducted from the final voucher drawn in payment for the contract.
13. WYOMING PATHWAYS hereby notifies all prospective bidders it will affirmatively assure that minority business enterprises will be afforded full and equal opportunity to submit bids in response to this invitation and are specifically encouraged to do so. WYOMING PATHWAYS further assures that it will not discriminate against anyone on the grounds of race, sex, age, color or national origin or disability in consideration for an award.
14. Bids are to be mailed or emailed, either to WYOMING PATHWAYS, PO Box 725, Lander WY 82520, in a sealed envelope marked “PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B” or emailed to michael@wyopath.org with a subject line “PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B”. Bids received after this time limit will not be considered.

WYOMING PATHWAYS

Michael Kusiek, Executive Director

WYOMING PATHWAYS

PO Box 725

LANDER, WY 82520

GENERAL PROVISIONS

**FOR NON-MOTORIZED, NATURAL-SURFACE TRAIL PROJECT ON THE
POLE MOUNTAIN UNIT OF THE MEDICINE BOW NATIONAL FOREST
EAST OF LARAMIE,
ALBANY COUNTY, WYOMING**

1. LICENSES, PERMITS AND TAXES:

The contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

2. LAWS TO BE OBSERVED:

The contractor shall keep fully informed on all Federal and State laws, all local bylaws, regulations, ordinances and decrees of bodies or tribunals having any jurisdiction or authority which in any manner affects those engaged or employed on the work, or which in any way affects the conduct of the work. The contractor shall be registered with the Wyoming Secretary of State to do business in the State of Wyoming. The contractor shall at all times observe and comply with all such laws, bylaws, ordinances, regulations, orders and decrees in force at the time of award. The contractor shall protect and indemnify WYOMING PATHWAYS and its representatives against any claim or liability arising from or based on the violation of any such law, bylaw, ordinance, regulation, order of decree whether by himself or his employees.

3. CONTRACTOR'S INSURANCE:

a) The contractor shall not commence work under this contract until he has obtained all the insurance required hereunder and such insurance has been approved by WYOMING PATHWAYS. Approval of the insurance by WYOMING PATHWAYS shall not relieve or decrease the liability of the Contractor. The Contractor shall file a Certificate of Insurance with WYOMING PATHWAYS, verifying each type of coverage required including a certificate of insurance specifically naming WYOMING PATHWAYS as additionally insured.

1. Workers' Compensation and Employer's Liability Insurance. The Contractor shall provide proof of workers' compensation coverage for all its employees who are to work on the project described in this Contract. Contractor's coverage shall be under the Wyoming Workers' Safety and Compensation program, if statutorily required, or such workers' compensation insurance as appropriate. Non-Wyoming Contractor's insurance coverage shall also include Employer's Liability "Stop Gap" coverage, in an amount not less than *Five Hundred Thousand Dollars (\$500,000)* per employee for each accident and disease. The Contractor shall also

supply to WYOMING PATHWAYS proof of workers' compensation and employers' liability insurance, if required, on each and every subcontractor prior to allowing that subcontractor on the job site.

- 2 Commercial General Liability Insurance. The Contractor shall provide coverage, during the entire term of this contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and products and completed operations, in an amount not less than *One Million Dollars (\$1,000,000)* per occurrence.
- 3 Business Automobile Liability Insurance. The Contractor shall maintain, during the entire term of the contract, automobile liability insurance in an amount not less than *Five Hundred Thousand Dollars (\$500,000)* per occurrence.
- 4 Unemployment Insurance. The Contractor shall be duly registered with the Employment Security Commission, Unemployment Compensation Division. The Contractor shall supply an Official notice of Unemployment Insurance Coverage for itself and on each and every subcontractor prior to beginning work under this contract.
- 5 Certificate of Good Standing. The Contractor shall provide a Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs prior to performing work under this Contract.
- 6 Payment of Premiums and Notice of Revocation. All policies required under this Contract shall be in effect for the duration of this Contract and project. All policies shall be primary and not contributory. Contractor shall pay the premiums on all insurance certificates which must include a clause stating that the insurance may not be revoked, canceled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to WYOMING PATHWAYS.
- 7 WYOMING PATHWAYS May Insure for Contractor. In case of the breach of any provision of this Section, WYOMING PATHWAYS may, at WYOMING PATHWAYS's option, purchase and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as WYOMING PATHWAYS may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found to be due or become due to the Contractor under this Contract.

b) WYOMING PATHWAYS'S RIGHT TO REJECT: WYOMING PATHWAYS reserves the right to reject a certificate of insurance if the Contractor's insurance company is widely regarded in the insurance industry as financially unstable. This includes, but is not limited to, insurance companies with an "Omit" rating in the A.M. Best insurance rating guide.

c) WYOMING PATHWAYS'S RIGHT TO CONTACT INSURER: WYOMING PATHWAYS shall have the right to consult with the Contractor's insurance agent for

disclosure of relevant policy information. Relevant information includes, but is not limited to:

- 1 Exclusions endorsed;
- 2 Claims in progress which could significantly reduce the annual aggregate limit;
- 3 If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but not necessarily be limited to:
 - A. Retroactive dates;
 - B. Extended reporting periods or tails; and
 - C. Any applicable deductibles.

4. PRE-BID MEETING, LOCATION:

Before submitting his bid, the contractor will be required to visit the site with WYOMING PATHWAYS and thoroughly familiarize themselves with the conditions affecting the work.

PROJECT MANAGER: MICHAEL KUSIEK, EXECUTIVE DIRECTOR,
(307) 760-9035, WYOMING PATHWAYS

Any additional information or questions concerning the work shall be referred to this representative for clarification or approval.

BIDDERS ARE CAUTIONED TO MAKE CAREFUL OBSERVATIONS OF EXISTING CONDITIONS AT THE SITE.

5. CONTRACT TIME:

Said work shall commence upon receipt of the Notice to Proceed, which is estimated to begin around the end of May, 2024 and shall be completed within the contract dates. Concept of the work is to start at a time selected by the contractor and conveyed to WYOMING PATHWAYS and to progress without interruption until the job is complete. Bidders shall understand that if circumstances so arise that a contract extension is needed, one shall be granted due to inclement weather, acts of God and acts beyond the control of the contractor, such as strikes, fire, lockouts, or unusual delays in shipment. The Project Manager and the contractor shall mutually agree on a reasonable extension of time.

6. EXTRA WORK:

The contractor shall perform unforeseen work, for which there is no price included in the contract, whenever it is deemed necessary or desirable in order to complete fully the work contemplated. Such work shall be performed as directed or agreed upon and will be paid for at the unit prices, approved rental rates or lump sum stipulated in the order authorizing the work.

7. BASIS OF AWARD:

WYOMING PATHWAYS reserves the right to reject any and all bids, to waive any and all informalities and to negotiate contract terms with the successful bidder, and the right to disregard all non-conforming, non-responsive or conditional bids.

In evaluating Bids, WYOMING PATHWAYS shall consider the qualifications and experience of the Bidders in constructing purpose-built, natural-surface trail by hand-build and with specialized machinery methods, as well as experience with trail design, layout and modification, whether or not the Bids comply with the prescribed requirements and hourly rates and unit prices, if requested in the bid forms, are extended correctly.

WYOMING PATHWAYS may conduct such investigation as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed sub-contractors, employees, and other persons and organizations to do the work in accordance with the Contract Documents to WYOMING PATHWAYS's satisfaction within the prescribed time.

Unless otherwise specified by WYOMING PATHWAYS or the bidder, WYOMING PATHWAYS may accept any item or groups of items in the bid as may be in the best interest of WYOMING PATHWAYS.

If the contract is to be awarded, it will be awarded to the low bidder whose evaluation by WYOMING PATHWAYS indicates to WYOMING PATHWAYS that the award will be in the best interest of WYOMING PATHWAYS.

8. WARRANTY:

A guarantee and warranty will be provided by the Contractor on all work of this project. Any portions needing replacement or repair shall be completed by the Contractor at their expense, within a time frame agreed upon by WYOMING PATHWAYS. All manufacturer warranties shall be transferred to WYOMING PATHWAYS.

If the Contractor does not promptly comply with the terms of such instruction, WYOMING PATHWAYS may have the defective work corrected or the rejected work removed and replaced, and all costs incurred therefore, including compensation for additional professional services, shall be paid by the Contractor and its sureties. The remedies provided in this section are in addition to all other remedies available to WYOMING PATHWAYS under applicable laws and shall not be construed as exclusive of any other legal right or remedy available to the WYOMING PATHWAYS.

9. INDEMNIFICATION:

The Contractor shall indemnify, defend, and hold harmless WYOMING PATHWAYS, the and its officers, agents, employees, board members, successors, volunteers and assignees from any and all claims, lawsuits, losses, and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Contractor's malpractice.

WYOMING PATHWAYS
PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B
PO BOX 725
LANDER, WYOMING 82520

BID FORM

In compliance with the Call for Bids, General Provisions, Specifications, Maps and Drawings, the undersigned hereby proposes to furnish all labor and materials and to perform all work necessary for the PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B in accordance with the Call for Bids, General Provisions, Specifications and Drawings, and any and all Addenda for considerations in the following amounts_____ (attach extra pages as needed):

1. That for and in consideration of the amount shown above, this contractor shall perform the work of PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B in a good workmanlike and substantial manner and to the full satisfaction of and under the supervision of the Representative in charge of the Project. In the prosecution of the work, the Contractor shall, at his own cost and expense, furnish all labor, machinery, tools, equipment, materials, and supplies except such equipment and materials which shall be furnished by WYOMING PATHWAYS, as provided in the Specifications or General Provisions, and shall perform the work in strict conformity with the General Provisions and Specifications relative to this work.
2. In consideration of the covenants and agreements to be kept and performed by the Contractor and for the faithful performance of this Bid and the completion of the work embraced herein according to the plans, specifications, drawings and conditions herein contained and referred to, WYOMING PATHWAYS shall pay and the Contractor shall receive and accept as full compensation for everything furnished and done by the Contractor under this proposal and also for all loss or damage arising out of the nature of the work, the action of the elements or from any unforeseen contingencies or difficulties encountered in the prosecution of the work, the prices stipulated above.
3. Time shall be the essence of this contract on the part of the Contractor and it is hereby agreed by the parties hereto that in case all of the work called for under said contract, in all parts and requirements, is not completed by and at the time herein mentioned or by and at such other time to which the period of completion may be extended, damage will be sustained by WYOMING PATHWAYS, and that it is and will be difficult or impossible to ascertain and determine the actual damage which WYOMING PATHWAYS will sustain in the event of and by reason of such delay, and it is therefore agreed that WYOMING PATHWAYS may demand said Contractor pay Fifty Dollars (\$50.00) per working day, as agreed damages and not as penalty, and the same shall be deducted from the amount due or to become due to the Contractor and such payments or deductions shall not in any degree release the Contractor from further obligations and

penalties in respect to the fulfillment of the entire contract, nor any right which WYOMING PATHWAYS may have to claim, sue for, and recover as compensation and damages for non-performance of this proposal. No change will be made by the Contractor for hindrances or delays from any cause, whatsoever, in the progress of the work.

4. Said work shall be commenced upon notice to proceed and shall be completed per contract documents PROVIDED, however, that should the Contractor be delayed in the prosecution of the work by any act, neglect or fault of WYOMING PATHWAYS, or by any damage caused by fire, flood or other casualty over which the Contractor has no control, then the time herein set for the completion of the work may be extended as determined by mutual agreement of the parties hereto. WYOMING PATHWAYS hereby reserves the right to accept and make use of any portion of said facilities before completion of the entire work without invalidating the contract, or binding WYOMING PATHWAYS, and accept the remainder of the work or any portion thereof, whether completed or not.
5. It is also agreed by the parties hereto that the Call for Bids, Drawing, General Provisions and Specifications, herein referred to, form an essential part of this agreement and whether the same are attached hereto or on file in the office of WYOMING PATHWAYS in Lander, Wyoming, they shall have the same force and effect as if spread at length herein.
6. If written Notice of Acceptance of this bid is delivered to this bidder within Twenty (20) calendar days after date of bid opening, this bidder will within Twenty (20) calendar days after date of such notice, execute and deliver the Contractor's Certificate(s) of Insurance in accordance with the General Provisions and bid as accepted.
7. The bidder hereby agrees that should they be awarded this contract, Contractor shall not discriminate against any person who performs work there under because of age, race, religion, color, sex, national origin or ancestry.
8. The bidder also covenants and agrees and that this Bid is made without collusion with any other person, firm or corporation; that he has carefully examined the Call for Bids, General Provisions, Drawings and Specifications, and any and all Addenda governing the work included in this Bid, and has inspected the site of the work and fully understands the physical conditions under which the work must be performed.
9. The bidder will perform all extra work that may be required and on the conditions set forth in the General Provisions.

Bidder to acknowledge receipt of the Addenda: _____ / _____ / _____ / _____ /

SIGNATURE PAGE

1. BY SUBMISSION OF A BID, THE BIDDER CERTIFIES:

- 1.1 Prices in this bid have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- 1.2 No attempt has been made nor will be by the bidder to induce any other person or firm to submit a bid for the purpose of restricting competition.
- 1.3 The person signing this bid certifies that he/she is authorized to represent the company and is legally responsible for the decision as to the price and supporting documentation provided as a result of this advertisement.
- 1.4 Bidder will comply with all applicable Federal regulations, policies, guidelines and requirements.

2. GENERAL INFORMATION:

Company Name: _____ Phone: _____

Signatory's Name: _____ Email: _____

Signature & Title: _____ Title: _____
(Date)

Mailing Address: _____

City: _____ State: ____ Zip: _____

Email Address: _____

SSN/Employer Identification Number _____

3. OWNERSHIP AND CONTROL: Bidder's Legal Structure:

- Sole Proprietorship General Partnership
- Corporation Limited Partnership
- Limited Liability Other _____

If Bidder is a sole proprietorship, list:

Owner Name: _____ Phone: () _____

Mailing Address: _____

City: _____ State: _____

SSN/Employer Identification Number: _____

Beginning date as owner of sole proprietorship: _____

Provide the names of all individuals authorized to sign for the bidder:

NAME (printed or typed)

TITLE

VERIFICATION

I certify under penalty of perjury, that I am a responsible official (as identified above) for the business entity described above as Proposer, that I have personally examined and am familiar with the information submitted in this disclosure and all attachments, and that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including criminal sanctions which can lead to imposition of a fine and/or imprisonment.

Name: _____

Title: _____

Date: _____

**PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B
ALBANY COUNTY, WYOMING
BID SUMMARY SHEET**

Contractor must complete the following Project Summary and Unit Worksheets with costs for each trail segment in the project and each unit within the trail. Failure to provide a unit price for any applicable BASE BID item is grounds for invalidation of the bid. Designating segments and units provides the owner the opportunity to eliminate or delay parts of the project depending upon bid prices and funds available.

Instructions:

- *Unit prices are to be provided on a per-project basis. Unit prices are fixed.*
- *Quantities listed for each work item are estimates. Final quantities for payment will be tallied upon project completion.*
- *Provide cost for one roundtrip mobilization on Project Summary Sheet.*
- *Add all item totals and provide a total cost at the bottom of the worksheet.*

The construction window for work to be started under this contract is generally between the receipt of the Notice to Proceed, issued approximately May/June 2024 through October 31, 2024 and shall be substantially complete on October 15, 2024. Contractor agrees to pay liquidated damages in the amount of Fifty Dollars (\$50.00) per day for each calendar day beyond that date that the project is not substantially completed. Project maps and photographs are included within the Addenda to this document.

Construction of typical trail features that are approximately 12” or less in height are included in the base trail cost and will not be bid as separate feature units (ex. rollers, broilers, grade reversals <12”). Trail tread that uses existing embankment berms are also included and will not be bid as separate feature units.

TRAIL NAME:	Unit Measure	Estimated Quantity	Unit Price	Totals
Trail Construction – Phase 2A	Lin. Ft.	10,134	\$???	\$???
Trail Construction – Phase 2B	Lin. Ft.	10,134	\$???	\$???
Other Work		???	\$???	\$???
Mobilization	1	???	\$???	\$???
TOTAL:				\$???

PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B

NOTE: The bid will be awarded for any single or combination of items that best utilize the project budget. Bids shall include sales tax and all other applicable taxes and fees. In case of a discrepancy, the “unit price” will govern over the total.

Contractors must provide:

- 1) Signature below indicating the Contractor’s bid pricing for items denoted above;
- 2) **A minimum of TWO (2) references** with the bid form to include name, address, telephone number, date of project, and description of services performed, period of performance, and contracted amount;
- 3) **Proposed approach to this project**, including machines/materials to be utilized, identification and experience of on-site personnel on similar projects with similar machines/materials.

NAME OF BIDDER: _____

DATE: _____

**WYOMING PATHWAYS
PO BOX 725
LANDER, WYOMING 82520**

SPECIFICATIONS: PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B

SCOPE:

The project consists of the Construction of the Pilot Hill/Pole Mountain Connector Trail Phases 2A and 2B on the Pole Mountain Unit of the the Medicine Bow-Routt National Forests and Thunder Basin National Grassland, near Laramie, Wyoming. Work includes completion of an on-site investigation of local conditions, furnish all labor, equipment, supplies and materials in performing all operations necessary for the complete and proper development of identified trail infrastructure associated with the project. This contract is for the construction of approximately $\pm 10,134'$ of new, natural surface, non-motorized trail for each Phase, for a total of $\pm 20,268'$. Specifics of this project will be discussed on the mandatory walk-through.

Work must be completed according to trail standards as contained within this scope of work and shall be substantially completed by October 15, 2024, with all work completed by October 31, 2024. Trail lengths are estimates derived from design work completed from survey by Wyoming Pathways. Preliminary layout of the trail corridor has been completed and the drain-edge flagged representing the trail corridor. As part of this project Wyoming Pathways will pin-flag the trail drain-edge, the contractor is responsible for final field alignment and design generally within a 10' corridor or as mutually agreed in the field.

Contractor will adhere to Sustainable Trail Construction best practices and guidelines accepted in the professional trail building industry as standards providing the foundation for all design and construction decisions (such as "half rule", frequent grade reversals, max grades function of soils and use, etc.).

DIVISION 1 - GENERAL REQUIREMENTS

Section 1.1 PROJECT LOCATION

The work is located within the boundaries of the Pole Mountain Unit, Medicine Bow National Forest. To access the project site take I-80 12 miles east of Laramie WY, exit at WY-210. The Pilot Hill Connector Trail may be accessed from the FS-703 and Tie City Trailhead intersection. Location is shown on the attached map, will be provided as KMZ Google Earth files, and may be requested in other formats, if needed. Construction will be coordinated with the USFS representative and Wyoming Pathways. WYOMING PATHWAYS has secured all necessary USFS approvals to complete the work.

Section 1.2 DESCRIPTION OF WORK

The general components of the work to be performed under these plans and specifications include, but are not limited to, furnishing and installing the following: Furnish and install natural

surface, hiking and biking optimized trails as described in the scope.

Section 1.3 LAYOUT and CLEARING

Layout of the approximate trail drain edge has been completed. Wyoming Pathways will pin-flag the trail drain-edge. The Contractor shall be responsible for all measurements that may be required for the execution of the work.

Limited clearing will be required and should be included in the bid price.

The contractor will collaborate with the Project Manager or his designee on decisions and alterations prior to any construction or changes requested.

Section 1.4 SUBMITTALS

Submittals shall be interpreted to include drawings, data, manuals, certifications, warranties, samples, charts, and other items furnished by the Contractor for approvals. Submittals will be given to the Project Manager. The following submittals will be required for this project:

- a. Proposed Construction Schedule and Bid Worksheets.
- b. Proposed size of trail crew, materials/machinery, and operator experience with each machine.
- c. Field inspection of proposed trail layout prior to construction commencing. This includes re-measurement of the proposed layout via wheel or GPS track to ensure that the estimated length of trail construction falls within the general parameters mentioned in the "Scope" section above.
- d. Weekly progress reporting for each Phase, to include completed and remaining lineal feet of trail and documentation of any issues that may affect the progress of the project.
- e. Separate invoices and accounting for Phase 2A and Phase 2B.

Section 1.5 MATERIALS

Materials as used in these specifications shall mean equipment, machinery, product, component or any other item to be incorporated in the work, "Alt-Adds" included.

The contractor will use on-site, native materials whenever possible. Native materials such as rocks, trees, soils, etc. within 100-feet of the general trail corridor may be used to construct trail features/structures, if it is determined that their use will not adversely impact natural resources based on a field review to include the Project Manager and Contractor.

Off-site materials furnished by the Contractor shall be of the type and quality described in these specifications. The Project Manager's determination as to whether substitution will be permitted will be final and conclusive.

Section 1.6 EQUIPMENT RESTRICTIONS, ACCESS AND HAUL ROUTES

Trails are to be constructed using a combination of machine labor and hand labor. To minimize

environmental impact and keep the footprint of disturbance within immediate trail construction area only, equipment shall be limited to hand tools and small (mini or micro) walk-behind or ride on mechanized equipment no wider than 48” or desired final trail width. Use of and types of mechanical equipment will need to be detailed in Contractor bid documents and approved by WYOMING PATHWAYS prior to construction. The Contractor shall inspect the access for suitability and will need WYOMING PATHWAYS approval for any access outside the general construction corridor. Any trail-construction related damage to lands located outside the trail corridor will be the responsibility of the Contractor. Equipment must be cleaned prior to commencing construction to ensure that weeds and invasives are not transported from off-site projects.

The Contractor shall make his own investigation of the condition to determine clearances, restrictions, and other limitations that may affect transportation and storage at the job site.

Section 1.7 POWER AND WATER

The Contractor shall make all necessary arrangements and shall provide any power and water required for construction purposes.

Section 1.8 STAGING AREA

Parking areas will be approved by Wyoming Pathways in coordination with Hot Springs County and the Contractor. However, WYOMING PATHWAYS will approve the exact location, before construction, of the staging area for on-site storage of equipment, materials, or other items needed for construction so as not to conflict with current recreational use of the parking areas. All tools and machinery should be cached within a reasonable distance from the work area.

Section 1.9 PRESERVATION OF VEGETATION

The Contractor shall exercise care to preserve the natural landscape, including trees and shrubs, and shall conduct construction operations as described in the ADDENDA so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works or excavation operations, all trees, native shrubbery, and vegetation, shall be preserved and protected from damage by the Contractor's construction operations and equipment.

All unnecessary destruction, scarring, damage or defacing of the landscape resulting from the Contractor's operations, shall be repaired, replanted, reseeded or otherwise corrected as directed by the Project Manager and at the Contractor's expense. After completion of the work, all areas disturbed by construction shall be scarified and left in a condition which will facilitate natural vegetation, provide for proper drainage and prevent erosion.

Section 1.10 CLEAN-UP

General clean-up will be carried out by the Contractor over the limits of the entire project to the satisfaction of the Project Manager and in the manner described in the ADDENDA. This

includes touch-up work, patching, scarifying of entry/exit to abandoned old trail sections, and clean-up of all materials related to this contract and Contractor. Clean-up will not be paid for separately but will be included in the prices bid in the schedule.

Section 1.11 ADJUSTMENT OF TOTAL CONTRACT PRICE

The amount of funds available for this project is a set amount and cannot be overrun. If the total amount exceeds the monies available, the amount of the bid will be decreased by the amount necessary to bring it in line with the funding available.

The unit prices are fixed and will not be changed, however, the quantities of units may change. Final quantities for payment will be tallied upon project completion. Should a decrease in the amount exceed twenty-five (25%) percent of the total bid, new unit prices can be negotiated by WYOMING PATHWAYS and the bidder.

Section 1.12 GUARANTEE AND WARRANTY

A guarantee and warranty will be provided by the Contractor on all work of this project. Any portions needing replacement or repair shall be completed by the Contractor at their expense, within a time frame agreed upon by WYOMING PATHWAYS. All manufacturer warranties shall be transferred to WYOMING PATHWAYS.

DIVISION 2 - TRAIL CONSTRUCTION GUIDELINES

Section 2.1 GENERAL

Guidelines specific to the PILOT HILL/POLE MOUNTAIN CONNECTOR TRAIL PHASES 2A AND 2B are detailed within the Addenda of which the contractor agrees to abide throughout the construction.

Contractor will adhere to Sustainable Trail Construction best practices and guidelines that are accepted in the professional trail building industry as standards, and will provide the foundation for all design and construction decisions. WYOMING PATHWAYS understands that all trails comprise a creative process driven by local conditions and the involved parties' collaborative efforts. Modifications to the specifications may be allowed, however, they must be made in collaboration with WYOMING PATHWAYS and documented.

All costs for earthwork of this project; excavation, stripping and backfilling, are considered subsidiary to the installation of natural surface trail and associated costs are to be included with the associated bid items, not to be paid separately. Bidders and the Contractor shall assume all responsibility for deductions and conclusions as to the nature of the materials to be excavated and the difficulties of making and maintaining the required excavations. Excavation shall be made to the lines, grades and dimensions prescribed in the various paragraphs of these specifications.

No excavation shall be made in frozen materials without written approval from WYOMING PATHWAYS.

All necessary precautions shall be taken to preserve the material below and beyond the established lines of all excavation. Any damage to the work due to the Contractor's operations shall be repaired at the expense of and by the Contractor. Material beyond the required or prescribed excavation lines which is loosened or disturbed by the Contractor's operations shall be removed or fine graded at the expense of the Contractor.

Where additional excavation is prescribed by the Project Manager to remove unsuitable foundation material, all earthwork due to such additional excavation shall be in accordance with these specifications.

The trail surfaces to be constructed shall be finished to the dimensions shown on the drawings or prescribed by the Project Manager. The surfaces shall be tamped or rolled with suitable tools or equipment to form a compacted trail foundation.

Section 2.2 EXCAVATION FOR DRAINAGE

The Contractor shall perform excavation for the drainage, and as may be instructed by the Project Manager. The drainage channels shall have side slopes and bottom widths to conform to the topographic and hydraulic conditions to be met and contained herein.

Section 2.3 SURFACE WATER CONTROL FEATURES:

Drainage structures will be incorporated into the trail tread and trail layout to minimize the effects of water flow and prevent excessive erosion. The Trail shall follow the contour, and minimize the impacts of water flows.

Alignment shall take advantage of natural drainages to minimize the need for major drainage modifications.

In areas where there is a potential for trail erosion, grade reversals shall be incorporated into the trail tread to create natural appearing drainage dips at appropriate intervals.

Section 2.4 BACKFILL

While backfill on this project will be minimal, any backfill shall be placed and compacted to the trail surface. The material to be compacted shall be deposited in approximately horizontal layers which shall not be more than 8 inches in thickness with compaction of each layer. Use of organic or duff is strictly prohibited.

Backfill material shall be obtained from material moved in required excavations. Backfill shall be placed to the same elevation on both sides of the structures, culverts or other work.

DIVISION 3 – COMPLETION REQUIREMENTS

Section 3.1 PAYMENT

Payment shall be for each project completed and in place as per the bid schedule, for which price and payment shall be full compensation for all materials, labor, installation, transportation, and any other incidentals necessary to complete the project according to the specifications and drawings.

In the event that all work is not completed by October 31, 2024 WYOMING PATHWAYS may assess Fifty Dollars (\$50.00) per working day, not as a penalty, but as liquidated damages to WYOMING PATHWAYS.

The liquidated damages assessment for non-completion by the time specified will be computed beginning the day following the first working day specified for completion and continue each and every working day until all items shown on the proposal are completed. If it is necessary to apply this assessment, the total amount of such damages will be deducted from the final voucher drawn in payment for the contract.

WYOMING PATHWAYS will work with the Contractor to ensure that any and all site-related permits or permissions have been secured to build the entire project.

Any vandalism is responsibility of contractor until project is accepted by the WYOMING PATHWAYS and Contractor will barricade the site during construction.

Section 3.2 GENERAL COMMENTS

- Contractors must have extensive experience constructing non-motorized trails to nationally accepted standards such as IMBA. In addition, contractors must have a minimum of five (5) years' experience building trails of similar size and scope to the trails in this document. This includes following flagging, clearing the general corridor, final trail alignment, pin flagging to contours, and directing machine and hand-build construction methods. As described per the formal bid sheet, contractors must provide a minimum of two (2) references with the bid form to include name, address, phone number, date of project, description, and location of project.
- Workmanship shall be of the best quality. The professional appearance of finished work shall be of equal importance with its intended use. All portions of the work shall be so laid out and installed so that the work, as a whole, is of uniform quality and appearance.
- Contractor shall prepare a construction schedule showing major construction activities before any construction begins.
- Contractor acknowledges that he has satisfied himself as to the nature and location of the work and the general and local conditions of the site by visiting the site or otherwise becoming thoroughly familiar with the project.
- A pre-construction conference shall be scheduled by the Contractor and WYOMING PATHWAYS as soon as practical after the Service Contract has been received by the Contractor. The meeting shall include the Project Manager or his designee, local government and partner organization invitees, and appropriate representatives of the Contractor who will

be responsible for the management of the project. Any major subcontractors shall also attend.

- The Contractor shall make every effort to verify the availability of materials for this project by the time of the pre-construction conference. Cost of delays because of non-availability of specified items when such delays could have been avoided by the Contractor, shall not be borne by WYOMING PATHWAYS. Burden of proof for substituted materials rests with the Contractor. Sufficient documentation must be provided in ample time for review by the Project Manager. Contractor must not assume that substitutions will be granted.
- It shall be the responsibility of the Contractor to become familiar with local or regional code enforcement if any applies to this project.
- Before performing any work or ordering any materials, the Contractor shall verify all dimensions of any existing and new work and shall be responsible for their accuracy.
- **Contract Time. Said work may commence upon receipt of the Notice to Proceed** and shall be completed by October 31, 2024. Concept of the work is to start and to progress without interruption until the job is complete. Bidders shall understand that if circumstances so arise that a contract extension is needed, one shall be granted due to inclement weather, acts of God, and acts beyond the control of the Contractor, such as strikes, fire, lockouts, and unusual delays in shipment. Time extensions shall be requested in writing within two weeks of the occurrence. The Project Manager and the Contractor shall mutually agree on a reasonable extension of time.

The Project Manager for Wyoming Pathways will be:

Michael Kusiek, Executive Director
Wyoming Pathways
PO Box 725
Lander, WY 82520

Phone: (307) 760-9035 and email: michael@wyopath.org

ADDENDA
DETAILED GUIDELINES FOR CONSTRUCTION

The following details information and provides guidelines to be followed when constructing the trails within the Forest. These guidelines are accepted in the industry as best practices and will be adhered to whenever possible.

- 1) **Trail Flagging-** Wyoming Pathways will pin flag segments to communicate intent to Contractor. Location must reside within a 10' wide corridor unless agreed upon by the Project Manager or their representative prior to construction.
- 2) **Trail Grades-** The Pilot Hill/Pole Mountain Connector Trail Phases 2A and 2B will have running grades that average 5-7%, and grades may exceed that only in short sections and with proper drainage maintained.
- 3) **Trail Usage:** Nonmotorized multi-use, Bi-directional. Green/Blue skill level.
- 4) **Desired Trail Experience:** Specifically longer more natural feeling grade reversals and broader more sweeping flowing turns that blend with the terrain are the goal of this trail.
- 5) **Features-** Trail difficulty will be constructed for beginner/intermediate abilities with modest bike optimized features. Feature frequency will be low to medium, with heights generally less than 12". No large wooden or rock features are requested. Earthen structures will be composed entirely of mineral soil and/or rock, stabilized and compacted. Hand tamping is not acceptable. Use of organic or duff is strictly prohibited.
- 6) **Clearing of Corridor-** General clearing of trees in the trail corridor is minimal, and shall be considered incidental to the trail construction. Maximum width of corridor will be approximately 10 feet, less preferred where possible, with narrower gateways through natural obstacles (trees, rock outcrops) encouraged. Height- 8-12'. Clearing and grubbing will be done with minimal disturbance to surrounding soils, vegetation, and viewshed. Taking of live trees larger than 4" will be avoided and only done when no other option. Limbing and pruning will be done using techniques and industry standards that protect trees/shrub from undue harm. Vegetation will be lopped to the ground no more than a few inches high and scattered at least 10 feet from the trail edge, making visibility of debris minimal.
- 7) **Spoils-** Spoil material, including dirt, duff, rock and vegetation loosed during trail construction must be distributed such that no berm is left along trail edge. Spoil material will be not more than 4" in depth, spread in a manner that does not bury existing vegetation, does not interfere with drainages, and is scattered to blend with surrounding landscape. Piling debris in stream beds, gullies, or suspected wetlands is prohibited. If borrow pits are created they will be restored to finish requirements.
- 8) **Trail Tread-** Trail tread will be ~18"-36", larger where necessary for landing platforms, turning radius's and features. Full bench construction whenever possible. If fill is required, it will be properly retained and discussed with Project Manager prior to action. Mainly firm

trail surfaces with smooth paths thru obstacles. Rock material may be left in tread in instances of increased difficulty or to achieve a particular goal of a specific segment. All stumps, roots, brush will be removed from tread with holes filled and compacted.

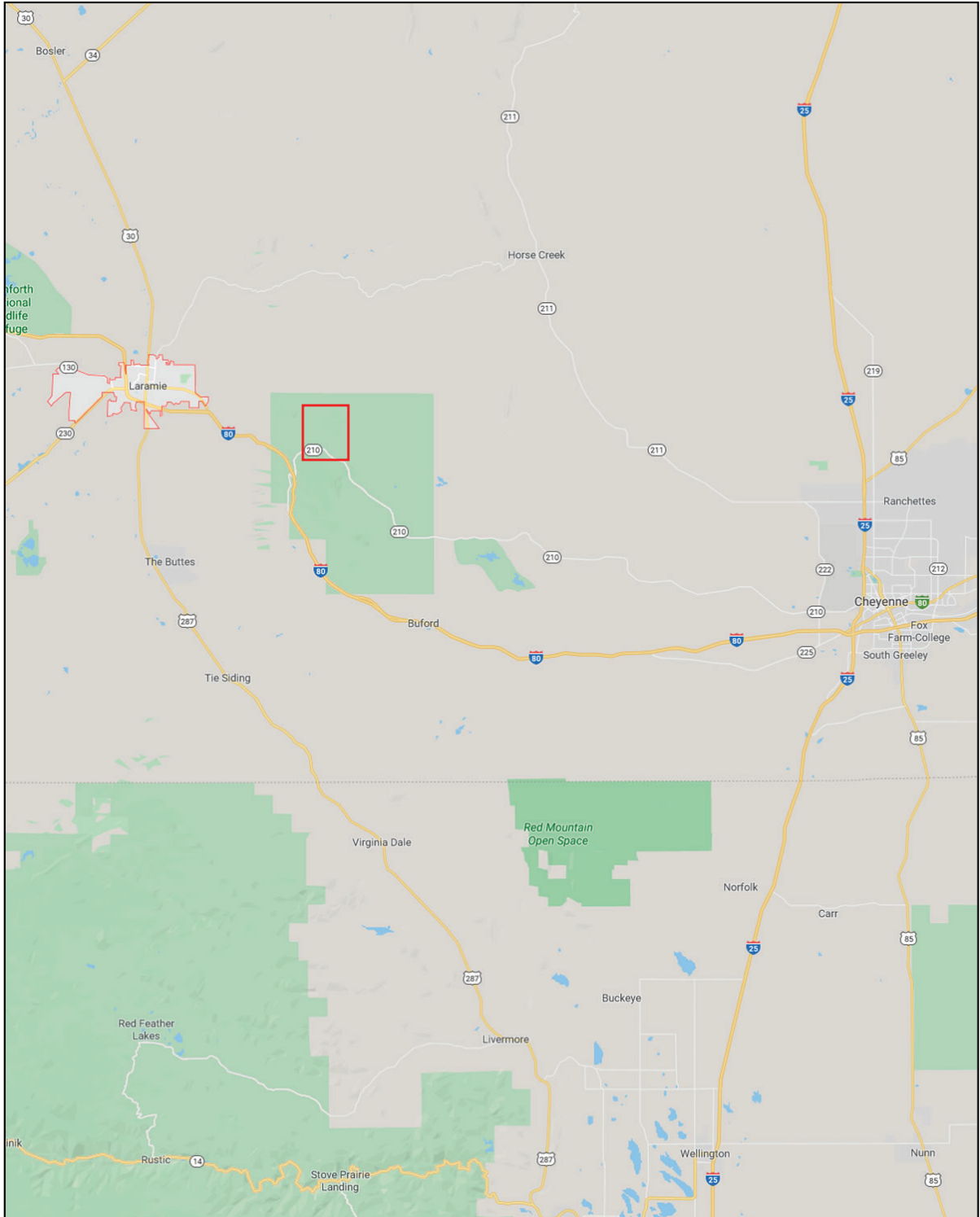
- 9) **Water Diversions-** A 5-7% outslope will be incorporated on all applicable tread. When not possible or desirable due to purpose-built in-sloping, resource concerns, or obstructions, water can be directed down the trail for short distance before a water diversion feature is incorporated. Frequent grade reversals are encouraged. To promote self-cleaning drains, grade reversals will be >15%. If >25% rip-rap or armor will be installed. Water bars will not be used in the construction of this project. Six, 12” culverts with armored wing-walls will need to be installed.
- 10) **Turns-** All berm turns or insloped switchbacks will be created with an insloped turnpad. Turning radii should be consistent throughout the turn. Turns with a running grade of twenty percent (20%) or greater in the apex should have a rock armored drain two feet (2’) wide following the inside of the turn. Any fill structure for a turnpad will comply with composition, compaction, and fill slope requirements. If retaining wall employed in place of a fill slope, structure will be constructed of stone and comply with all industry standards and specifications for rock retaining walls. A grade reversal or rolling grade dip will be constructed before and after each bermed turn or insloped switchback. If multiple switchbacks are required, they will be situated to minimize “stacking”. The grade reversals or rolling grade dips are part of the entire feature and will not be billed as separate units. The contractor will create short-cutting deterrents at each turn.
- 11) **Rollers & Brollers (Bermed Rollers)-** A broller is defined as tilted tread surface that is insloped or off camber in excess of the standard tread out slope of 5%. Brollers do not result in a change of direction across the landscape and do not cross the fall line. Typical rollers and brollers will be included in the unit bid price for all trail construction types and are not considered berms or turns.
- 12) **Grade Reversals/Rolling Grade Dips-** A designed grade reversal or rolling grade dip should occur approximately every 20-50 feet. Grade dips will be incorporated uphill and downhill from every significant turn unless acceptable substitute present. Typically 6’ long or greater in bottom, and 10’ long or greater on top, a height differential of 12”, with a grade between 15%- 25% grade, and sides slope of 2:1. Specific details will be determined by the contractor in partnership with Wyoming Pathways. Reversals constructed of fill >12” are considered features.
- 13) **Armor-** Tread hardening using native stone will be implemented where native stone is available and done to known industry standards in grade, stability, width and length. Visible rocks that can be easily collected without significant disturbance will be used. Any alternative manufactured armoring products that the contractor would like to use must be preapproved by WYOMING PATHWAYS. This trail will require an estimated 120’ of armoring and will be described and discussed on the mandatory walk-through for all bidders.
- 14) **Finish Work-** Finish work to be performed by the contractor. Trails will be finished as

project advances to minimize erosion, control sediment, and reduce exposure of the tread. All equipment marks will be smoothed and blended prior to completion. Back slope will be graded to 3:1 or matched to existing slope where ever possible, and stumps or exposed roots will be flush-cut or removed. Contractor will assure that down slope spoils are visually minimal and will not interfere with drainage off tread. Rocks unearthed that are not used in construction will be spread away from trail edge, natural side up and anchored to avoid rolling. All finish work will be completed to the satisfaction of the WYOMING PATHWAYS. Signage is the responsibility of the WYOMING PATHWAYS.

PROJECT VICINITY MAP

Pilot Hill/Pole Mountain Connector Trail Project Phases 2A and 2B Proposed Trail Work Vicinity Map

Located in the Medicine Bow National Forest between Laramie, WY and Cheyenne, WY Indicated in Red



PROJECT SITE MAP

**Pilot Hill/Pole Mountain Connector Trail Project Phases 2A and 2B
Proposed Trail Work Site Map**

Located in the Medicine Bow National Forest between Laramie, WY and Cheyenne, WY



DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

(1.) Bidder certifies that:

(A.) They do not intend to subcontract work. (_____) Check here.

(2.) Bidder certifies that:

(A.) It has taken affirmative action to seek out and consider Disadvantaged Business Enterprises (DBEs) as potential subcontractors. DBE is a certification program under the U.S. Department of Transportation for minority – or women-owned – operated and controlled firms that are involved in highway and airport construction.

(B.) It has taken affirmative action to seek out and consider DBEs as potential suppliers.

(3.) Further, the Bidder shall:

(A.) Specifically describe, on separate lines of this form, each component of work of the contract to be subcontracted to each DBE Firm is being used as a supplier of materials and for other subcontract work, the firm must be shown twice, once as a supplier and once performing subcontract work.

(B.) List all contacts and follow-up contacts made with the potential DBE subcontractors and DBE material suppliers. (If necessary, use additional sheets).

(C.) List the dollar amount quoted by each responding DBE subcontractor for the work described in accordance with B. above and the dollar amount quoted by each DBE material supplier for the materials described in accordance with A. above.

(D.) Only those DBEs possessing current certification by WYDOT will be eligible to meet the requirements of the DBE program.

(E.) Indicate responding DBEs that will be used, and those that will not be used.

Signature: _____

Date: _____

PARTICIPATION CERTIFICATION

The Bidder has contacted the following Disadvantaged Business Enterprises (DBE) to solicit quotations for work to be subcontracted or for materials to be used on this project. If one DBE firm is contacted as a supplier of materials and for other subcontract work (i.e. furnish sign materials as a supplier and performing flagging and traffic control as a subcontractor) the firm must be shown twice, once as a supplier and once for the subcontract work.

Information from all DBE firms that submitted quotes, whether solicited or not solicited, must be retained in the project file.

____ Do Not Intend to Subcontract Work (Check)

Disadvantaged Business Entity	Specific Subcontract Work or Materials Requested	Contact Method	Contact Date	Contact Result
				<input type="checkbox"/> No Response <input type="checkbox"/> Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted – See Bid
				<input type="checkbox"/> No Response <input type="checkbox"/> Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted – See Bid
				<input type="checkbox"/> No Response <input type="checkbox"/> Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted – See Bid
				<input type="checkbox"/> No Response <input type="checkbox"/> Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted – See Bid

MATERIALS AND BUY AMERICA CERTIFICATION

The undersigned, hereinafter referred to as Bidder, hereby proposes to furnish all materials except materials furnished by the WYOMING PATHWAYS including: machinery, tools, equipment, and supplies, and perform all labor necessary to complete the work described in the bid or proposal.

WYOMING PATHWAYS shall not require nor provide a price differential for materials produced within the State of Wyoming. The bid and resulting contract shall not discriminate against the use of articles or materials shipped from or prepared, made or produced in any state, territory or possession of the United States.

FOR ALL RTP PROJECTS THE BIDDER CERTIFIES: BUY AMERICA REQUIREMENTS

The project either: (check those that apply to the project)

() Includes no permanently incorporated steel or iron materials, or

() For steel or iron materials incorporated into the project, all manufacturing processes, including the application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

Signature: _____

Date: _____

BUY AMERICA REQUIREMENTS

In accordance with 23 USC 313, 23 CFR 635.410, and the Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law’s (BIL) permanently incorporated predominantly steel and/or iron materials, manufactured products, and construction materials shall be domestically produced.

A. Control of Materials.

To qualify as domestic, all manufacturing processes, including melting, manufacturing, fabricating, grinding, drilling, welding, finishing, and coating of any product containing steel and/or iron materials, must have been performed in the United States. A domestic product is a manufactured steel and/or iron material/product and/or construction material that was produced in one of the 50 States, the District of Columbia, or in the territories and possessions of the United States. Raw materials used in the steel and/or iron materials may be imported. Raw materials are materials such as raw iron ore, and waste products which are used in the manufacturing process to produce the steel and/or iron material/product. The FHWA has granted a nationwide waiver for pig iron and processed, pelletized, and reduced iron ore. Waste products include scrap (i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, steel trimmings from mills or product manufacturing). Extracting, crushing, and handling the raw materials which are customary to prepare them for transporting are exempt from Buy America. The use of foreign source steel billets or iron ingots are not acceptable under

Buy America. All items, regardless of origin, shall comply with their individual specification requirements and with the requirements stated elsewhere in this subsection. The Contractor shall ensure the domestic steel and/or iron materials are supplied in conformance with the above referenced laws.

The Buy America provisions only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the infrastructure project, such as temporary scaffolding. In addition, it does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

Federal-Aid Contracts

For Federal-Aid contracts, all iron and steel, manufactured products, and construction materials incorporated into the contract shall be produced/manufactured in the United States as follows:

- a. All iron and steel used in the project shall be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. All manufactured products used in the project shall be produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. Manufactured products mean articles, materials, or supplies that have been: (i) processed into a specific form or shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- c. All construction materials shall be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. Construction materials includes an article, material, or supply that is or consists primarily of:
 - Non-ferrous metals;
 - Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - Glass (including optic glass);
 - Fiber optic cable (including drop cable);
 - Optical fiber;
 - Lumber;
 - Engineered wood; or
 - Drywall.

Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material. Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than construction materials.

Construction materials do not include an item of primary iron or steel; a manufactured product; or Section 709179(c) materials. 709179(c) materials include cement or cementitious materials; aggregates such as stone, sand, or gravel; or

aggregate binding agents or additives).

An article, material, or supply should be classified into only one of the following categories: (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed. The classification of an article, material, or supply falling into one of the four categories must be made based on its status at the time it is brought to the work site for incorporation into the project.

For Federal-Aid Contracts, FHWA allows the Contractor to permanently incorporate in the construction of the contract a minimal amount of foreign steel and/or iron materials, if the combined cost of such materials does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The combined cost of foreign steel and/or iron materials will be the value of the materials as they are delivered to the contract, documented by invoice or bill of sale to the Contractor.

For Federal-Aid Contracts, USDOT's Waiver of Buy America Requirements for De Minimis Costs and Small Grants allows the Contractor to permanently incorporate in the construction of a contract (under a single financial assistance award) a minimal amount of foreign manufactured products and construction materials, if the total value of the non-compliant products/materials is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project. This does not apply to iron and steel subject to the requirements of 23 U.S.C. 313 on financial assistance administered by FHWA. The de minimis threshold in 23 CFR 635.410(b)(4), and stated above, continues to apply for steel and iron. The "total applicable costs for the project" are defined as the cost of materials (i.e., steel/iron, manufactured products, and construction materials) used in the project that are subject to Buy America, including materials that are within the scope of an existing waiver. Based on USDOT's waiver, if the total amount of federal financial assistance applied to the project, through awards or subawards, is below \$500,000, then Buy America does not apply.

B. Waivers.

Federal-Aid Contracts.

The Contractor may request a waiver if it can be demonstrated that:

- a. Applying a Buy America preference would be inconsistent with the public interest (a "public interest waiver");
- b. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (a "nonavailability waiver"); or
- c. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an "unreasonable cost waiver").

The Contractor shall submit a waiver request to the Engineer which includes a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and including copies of all documentation verifying the unavailability of the material or product.

The Department will submit approved waiver requests to the FHWA for review. The Contractor shall investigate and respond to any public comments made to the FHWA Office of Program Administration, indicating that a domestic supplier can provide the material for which a waiver has been requested. Final approval of the Buy America Waiver request will be made by the Administrator, Federal Highway Administration. The waiver will be effective when it is posted in the Federal Register.

C. Certifications.

A Manufacturer's Certification is required to certify that the material/product is of domestic origin. Acceptable statements are: "Conforms (or Does not conform) to the requirements of NYSDOT Standard Specifications §106-11 *Buy America*" (acceptable for steel/iron, manufactured products and construction materials) or "Conforms (or Does not conform) to the requirements of 23 CFR 635.410 *Buy America Requirements*" (acceptable for steel/iron and manufactured products only) or "Conforms (or Does not conform) to the requirements of the Build America, Buy America Act" (acceptable for construction materials only). Certifications shall comply with §106-04 *Material Acceptance Records*.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

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

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

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

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

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

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

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

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

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

d. *Fringe benefits not expressed as an hourly rate.*

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

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

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

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

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

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

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

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

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

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

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

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

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

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

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

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

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

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

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

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

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

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

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

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

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

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

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

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

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

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

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

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

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

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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